

No. 15884

United States
Court of Appeals
for the Ninth Circuit

ROHR AIRCRAFT CORPORATION and THE FRANKLIN C.
WOLFE COMPANY, INC., Appellants,

vs.

RUBBER TECK, INC., RUBBER TECK SALES AND SERVICE
CO., PAUL A. KARRES, OTTO R. GRASS and JOE P.
KERLEY, Appellees.

RUBBER TECK, INC., RUBBER TECK SALES AND SERVICE
CO., PAUL A. KARRES, OTTO R. GRASS and JOE P.
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ROHR AIRCRAFT CORPORATION and THE FRANKLIN C.
WOLFE COMPANY, INC., Appellees.

Transcript of Record

(In Three Volumes)

VOLUME II.

(Pages 409 to 825, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

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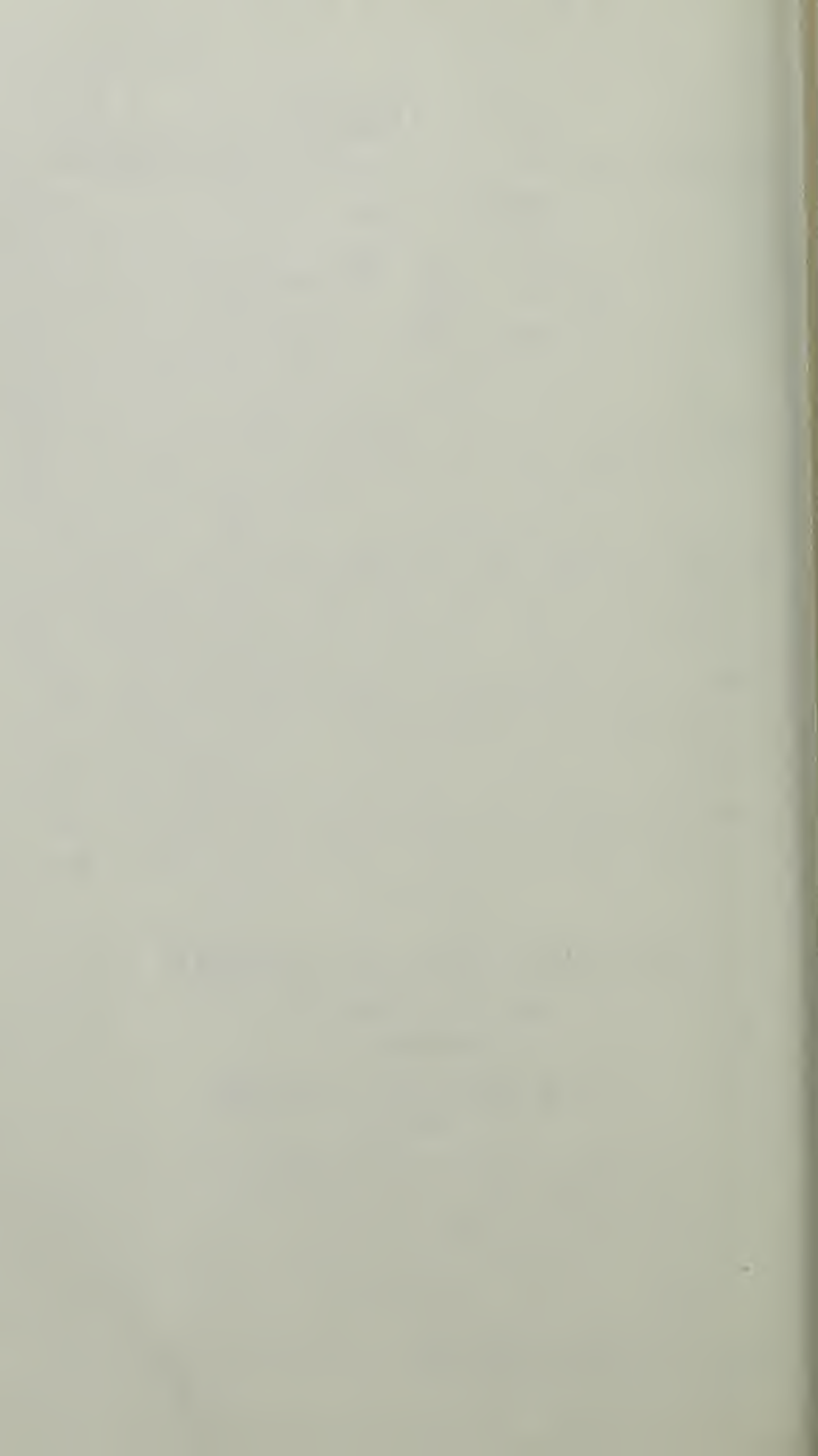
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(Testimony of Joe Kerley.)

Mr. Fulwider: Just a minute. Will you give me a chance to finish?

The Court: There is no issue in this case about the quality of the rubber or who made the report. When I went into that exhibit, I thought you were talking about the O rings and the washers rather than the content of the rubber, the contents of the O ring.

Mr. Fulwider: May I ask one more question here, your Honor, and I think it will clear up the whole situation?

The Court: All right.

Q. (By Mr. Fulwider): At the time you sent these Rohr reports, part of Exhibit 3 and Exhibit 5, that we have just been discussing, to Wright Field for approval, Rubber Teck did [559] not have a government-approved rubber that they could use in the Duo-Seal, did they?

A. I don't believe so at that time. I wouldn't be positive.

Q. The Lock-O-Seals you had been making with Wolfe compounded rubber?

A. With a rubber that Wolfe compounded?

Q. Yes, or was compounded according to specifications. A. I will say yes to that. [560]

* * * * *

Recross Examination

Q. (By Mr. Miller): Since you sold your stock as of July 31, 1954, do you have any connection with Rubber Teck in the way of advisory capacity or consulting capacity or anything of that nature?

A. No, sir, none whatever. [563] * * * * *

BERNARD GROSS

having heretofore been duly sworn, was examined and testified further as follows:

Cross Examination

Q. (By Mr. Miller): When did you first meet Mr. Kerley? A. In about 1941.

Q. He was with McClatchie? [564]

A. That's right.

Q. Was McClatchie supplying rubber goods to Rohr for use on airplanes?

A. Shortly after I met him, yes.

Q. Did you do any test work on rubber goods supplied by McClatchie?

A. Well, we did some test work. They were in effect proprietary items of our own and we tested them, not in the light of conforming to military specifications, but we tested them for our own information, yes.

Q. Did you have military specifications at that time on the rubber goods supplied by McClatchie?

A. The parts that I recall at the moment were not covered by military spec.

Q. Now, did you make any test, did you do any test work on chafing strips supplied by McClatchie?

A. Yes.

Q. Were those covered by military specifications? A. No.

Q. Did you render any reports on the chafing strips similar to these reports, oh, Exhibit 3 and Exhibit 5, for example?

(Testimony of Bernard Gross.)

A. I don't recall any such reports for the chafing strips.

Q. Now, when was it that this problem of sealing the [565] tanks on the Coronados was first presented to you?

A. As I recall it, it was summer 1943.

Q. And how was this problem known to you in 1943, made known to you?

A. Well, by way of copies of the contract which our company had. I received copies of the contract and was made acquainted with the problems involved in the contract.

Q. Do you have a copy of the contract here?

A. No.

Q. Have you seen it lately? A. No.

Q. Do you know its date?

A. Well, as I recall it, it was 1943 when I received the copy, summer of 1943.

Q. What did the contract provide for?

A. The contract——

The Court: The contract is the best evidence. If you can produce the written contract, let's have the written contract.

Mr. Miller: I don't have it, your Honor. That is part of their trade secrets, I guess. We have been trying to find out the trade secrets angle on this.

The Court: Do you have a copy of the written contract?

The Witness: No, I don't have a copy. [566]

The Court: Do you know where a copy is?

The Witness: Unless it be in the Rohr files, I

(Testimony of Bernard Gross.)

certainly wouldn't have any occasion to have it.

Q. (By Mr. Miller): Well, let's go on. Did the contract say to fix up leaky tanks?

A. The contract called for the reconversion of the PB2Y3, incorporating as one item making the center section or the fuel compartments in the center section fuel tight.

Q. What did you do towards the solution of this problem?

A. Well, the solution of the problem involved the removal of the bladder cells, the analysis of the structure itself in the center section, so that the joints could be sealed, and so that the fasteners could be sealed.

Q. You say it involved that. My question was, what did you do towards the solution of the problem?

A. Well, we solved that problem of sealing the voids and surrounding the fasteners that were involved in these fuel compartments, of which there were four in the center section.

Q. What did you do in the way of solving it?

A. Well, the sealing of the joints involved quite a bit of——

Q. No. We are confining ourselves to bolts.

A. Yes.

Q. The suit is about the bolts. [567]

A. Oh, yes, if you will. The bolts presented a problem in that we knew that it was desirable to be able to use the standard bolts that were used on the airplane so it became obvious that some device,

(Testimony of Bernard Gross.)

some new device had to be developed to seal the fasteners, and particularly the bolts in the center section.

Q. That was obvious to you as soon as the problem was presented?

A. Well, it was required by contract that we do this.

Q. Did the contract require you to devise some new device to seal around the bolts?

A. The contract required that the fuel compartments be made leak tight. In order to accomplish this, we had to seal the fasteners, yes.

Q. As I recall your direct testimony, you went first—or was it first, with some official from the Air Force and visited all the other airplane companies in the Southern California area?

A. That's right. It was a Navy engineer.

Q. What was his name?

A. Max McClay.

Q. Is that the McClay who testified in this case here a few days ago?

A. Yes, sir.

Q. The same man? [568]

A. Yes, sir.

Q. Now, you called on the other airplane companies?

A. Yes.

Q. In the Southern California area?

A. That's right.

Q. Did all these companies have similar contracts to the Rohr contract to remedy or reconvert or reconstruct the Coronado planes?

A. I don't know the nature of their contracts. I do know that they had similar problems. I do

(Testimony of Bernard Gross.)

know that there was attempts to provide an integral tank for the major airplane companies on the West Coast, including Douglas and Lockheed. I was aware of this situation and it was for that reason we wanted to see what was being done, and we had the opportunity to see just that.

Q. You spent how much time in going around to these other plants to inquire how they were solving the problem?

A. As I recall it, we spent either a half a day, and in some cases a day at each plant. We went through the research laboratories and talked to those that were involved in the sealing in production, too.

Q. This, I will call it junket, in which you went around calling on these different plants, took about how long?

A. Well, I would say three days. [569]

Q. You called on all the plants in three days, you and Mr. McClay?

A. There are only about four major companies in this area.

Q. So you went to only three or four plants?

A. That's right.

Q. Was that the very first thing you did when you undertook to solve this problem?

A. That was one of the first things we did.

Q. What else did you do?

A. We did some literature research.

Q. Who did that?

A. Myself and some of my assistants.

(Testimony of Bernard Gross.)

Q. Did you delegate some of that literature research to some of your assistants?

A. As far as some of the routine work of locating the abstracts, but actually going through these abstracts and analyzing the contents, I did that myself.

Q. And how much time did you spend doing that? A. I would say several weeks.

Q. Devoted exclusively to that?

A. A good deal of the time, yes.

Q. Now, during this period did Mr. Kerley call on you? A. I don't recall that at all.

Q. Did you make any inquiry of anybody in any other [570] line of work as to how they sealed around bolts against loss at high pressures?

A. Well, I don't know the type of inquiries that you now direct your question about.

Q. You had a problem here of sealing around the bolt that you were trying to solve, isn't that right? A. An urgent problem.

Q. Did you make any inquiry in any other industry, the oil tool industry or any other industry?

A. Other than aircraft?

Q. Yes.

A. That is what I was trying to find out from you. No.

Q. You didn't ask Mr. Kerley how they sealed in the oil tool industry? A. No.

Q. After you had gone with Mr. McClay to these plants and had made this literature search, then what did you do toward solving this problem?

(Testimony of Bernard Gross.)

A. We proceeded first with conference and later with making up the various, or carrying out the various ideas that we had worked out in the sealing group.

Q. What did those ideas consist of?

A. Well, we went back, for one thing, you might say, and repeated some of the various attempts we had learned about to study them more carefully.

For example, we knew that one company, Pan American, was actually, after installing a bolt, taking the bolt out and then caulking, putting a caulking coat around the head and then tightening the bolt again.

We knew, too, that there were some attempts to place a free O ring under the head.

We also know that there were several attempts at using flat gaskets under the head of a bolt.

The Court: What kind of gaskets?

The Witness: Flat rubber gaskets, synthetic rubber.

The Court: All right.

The Witness: These ideas were looked at, they were made up in cross-section and studied to better understand the problem and the nature of them or the reasons for the failures of these various types of sealing devices or sealing.

As a result of this and some thinking about what we could do when we discussed fundamentals, what we would need, then it was that what now is called the lock seal came into being.

There were several ideas tried.

(Testimony of Bernard Gross.)

Q. What were these ideas that were tried, that is what I am trying to get at.

A. We repeated the art as we knew it at the time. I have described that. There was some of our own ideas that went into the development of this Lock-O-Seal, the use of O [572] rings in the head of a bolt.

The Court: May I ask this witness a question? In your investigation relative to how this problem could be solved, did anybody suggest to you about the countersinking of the bolt?

The Witness: Your Honor, I don't recall anybody suggesting the countersinking of the bolt. I do recall that that was part of the art as we knew it, the countersinking of and fusing a rubber O ring into it.

The Court: You did know that?

The Witness: This is one of the things we found out in our searches before, at the time we started on the problem.

The Court: Then you knew through your search that there was in the art a countersinking and the use of an O ring?

The Witness: Yes. As a matter of fact, the O rings we used in countersunk voids in a bulletproof cell. As a matter of fact, we were able to obtain some of those samples and some reports on that and we found out that these O rings that were in countersunk voids in bulletproof cells had failed.

We checked this with various prime contractors that we visited. They didn't work. [573]

(Testimony of Bernard Gross.)

The Court: Did you try?

A. As a matter of fact the O rings that were made for that purpose, there were some four companies that were qualified to make such O rings, including Goodyear, and the rubber had to be such that it was resistant to the fuels at that time, but they definitely were not successful, as I pointed out before.

The Court: They definitely were not successful because of the size of the rings?

A. No. There were several things that at that time accounted for the failure, one of them being the impossibility for the O ring to be put over onto the fastener. It became seated in the counter-sunk cavity provided for it and the fastener in many cases would be installed so there would be a void between the shank of the bolt and the O ring, and there was no way for the sealing ring to adjust itself so it would hug the shank, and it is necessary to have contact against the shank as well as the other side involved.

The Court: When you were trying to develop this idea, did you make any experiments relative to the counter-sinking in the O ring?

A. Yes, we did. We did, but actually we could do very little. We did, but the thickness of the sheet metal was such that it was impossible to counter sink to any [574] significant depth. In other words, if we had a door and the thickness was only 4/1000 and we had to provide a cavity in it, say as much as 6/1000, it was physically impossible to do it.

(Testimony of Bernard Gross.)

The Court: Well, I know, but you could have carried on some experiments with thicker metals to see whether or not it worked?

A. Yes, actually we did make some seal tests in the laboratory. We found out that the self-centering zone wasn't there.

Q. (By Mr. Miller): Did you ever have a conversation with Mr. Kerley in which Mr. Kerley suggested to you that you counter-sink the metal and drop in an O ring and then put on your bolt?

A. I don't recall such a conference.

Q. What experiments did you perform that you regard as being of your own idea that led toward the development of the Lock-O-Seal?

A. There were a number of experiments including the cutting under a groove on the head of a bolt. However, the bolt in that case had to be made with a head that was in size larger than a standard bolt, and there were some disadvantages to that configuration, besides having to use a special bolt. The bolt was sensitive which meant that the bolt would fail in fatigue because of this recess that was cut into the head, [575] and so we departed from it.

There were several other configurations that were tested, a number of them.

The idea of confining rubber there became more and more apparent, that we had to confine the rubber in some device that would be self-centering and working cooperatively with Mr. Cornwall, back and forth, why, we conceived developing, actually put-

(Testimony of Bernard Gross.)

ting into practice what is now called the Lock-O-Seal.

Q. (By Mr. Miller): Now, you have described how you were cutting a groove on the underside of the head. Was that groove cut into the shank or spaced at the shank?

A. Now, we had various configurations. As I recall, one of them did start at the shank, and in another case we took the O ring away from the shank. This made an excessive large head, but it was done.

Q. Did you ever use at the underside of the head any other type of rubber ring than the O ring?

A. Well, we did use O rings in various tests that were stamped out or that we stamped out of flat sheet which, in effect, meant a cross section, a square cross section, yes, sir.

Q. You tried that? On the underside of the head?

A. We tried it out in various configurations, yes.

Q. Well, what various configurations do you mean? [576]

A. Well, across the centers, the head, or various types of grooves on the head we described a moment ago.

Q. What were the various types of grooves on the head?

A. When the groove was adjacent to the shank,

(Testimony of Bernard Gross.)

where it was away from the shank. The square cross section was tried, yes.

Q. Did you ever try a square rubber ring inside of a metal ring?

A. When we got to Lock-O-Seals, as I remember, as I recall it, we tried various cross sections. One of them was made out of flat sheet and was square, yes.

Q. You did try a square rubber ring inside of the metallic ring? A. That is right.

Q. And what was the result there?

A. Well, offhand, we had for one thing, this pinching that prevents the metal to metal contact, with a consequent loss, or a subsequent loss of torque, a tightness of the bolt. It was unsuccessful.

Q. When was such a test performed by you?

A. Well, a good deal of these tests were between the summer of '43 up to and including the early part of '44. In other words, they were carried on in the last quarter of '43 and some in the first quarter of '44. [577]

Q. Was there any written record made of these tests? A. Some of them.

Q. Do we have such a written record here?

A. I am not sure. I am not familiar with the records that are here.

Q. Oh, Mr. Fulwider hasn't shown you the various exhibits here?

A. I don't know whether I have seen them or not, but I might say this, that normally in a research laboratory, everything is recorded each day

(Testimony of Bernard Gross.)

at the end of the day, it is all signed off. In most research laboratories normally that is done. However, during the urgency of the war, this was all put aside and there were many things that were done without the normal course of recording. Every one of the personnel was working day and night, and when utilizing every moment, every possible time we had, we did away with such things as we normally would do record-wise.

Q. And did you make a written record of trying out this square rubber ring inside a metallic ring?

A. I am not sure that a written record was made of it. I am not sure just how much went into each person's lab book. Each man had his lab book and I would review them once or twice a week, and those lab books were not kept in accordance with the normal procedures, during the war. They were kept, yes. [578]

Q. Did you make any written record of testing out the rubber rings on the underside of the head of the bolt?

A. I say again, this was included in one of the sealing groups lab reports. Generally this was the case, and I reviewed these books once a week.

Q. Are those books still in existence?

A. I doubt it very much.

Q. I show you Exhibit 36. Do you know where that exhibit came from? A. Yes.

That came from what we knew as the Rohr lab sketch book.

Q. Are there other sketches in that Rohr lab

(Testimony of Bernard Gross.)

sketch book pertaining to this sealing problem, besides this sketch?

A. There are others, yes.

Q. This was merely one selected one?

A. This was one of several.

Q. Are the others here in the courtroom, to your knowledge?

A. I am not so sure as I am familiar with all of the data that has been brought here, but I can answer your question, that this is one of several sketches pertaining to this subject.

On my direction the sketches were made for the lab sketch book, when I felt there was enough importance attached to anything that was going on in the laboratory that required [579] sketches, I would direct that a lab sketch be made. And incidentally, these sketches look informal, again. This was because of the time element and we wanted some system that would not detract too much from the time of the men working.

Q. You say that you instructed Mr. Cornwall to draw this sketch? A. I did.

Q. As of 12/21/1944? A. Yes.

Q. What did you tell him?

A. Well, in discussing this particular configuration here, I instructed that he draw up a sketch and that it be followed through, that is, it be made and so forth.

Q. Is that the sole instruction you gave to Mr. Cornwall? A. Yes.

(Testimony of Bernard Gross.)

Q. You didn't tell him anything else, other than to make up a sketch?

A. Well, I might clarify it; I don't think I understand your question but——

Q. I want to know just exactly what you told Mr. Cornwall to do.

A. I will be glad to tell you.

Mr. Miller: All right. [580]

The Court: Now, before you do that, may I inquire, who was Mr. Cornwall, what position did he hold?

A. Mr. Cornwall was an experimental mechanic who worked for me in the laboratory.

The Court: Is that Leo W. Cornwall?

A. That is Leo W. Cornwall.

The Court: And he knew nothing about this invention until you gave him this sketch, is that correct?

A. Oh, no, your Honor.

This sketch here followed the initial drawings that had to do with the invention. This was one. This was a sketch that followed the initial drawings.

The Court: Let us go back, then. What was your initial contact with Mr. Cornwall?

A. Mr. Cornwall was called in and the problem of sealing fasteners was discussed with him. We spent some time exchanging our ideas and we made decisions to build this Lock-O-Seal and he was directed to make drawings from time to time of things that had to do with the Lock-O-Seals.

(Testimony of Bernard Gross.)

The Court: Well, when was he first called in, when did he first present the problem to you?

A. As I recall it, it was either the last quarter of 1943 or the early part of '43, and most likely the latter part of the last quarter of 1943.

The Court: Wait a minute. The last quarter of 1943 [581] or the first part of 1944?

A. Yes, yes.

Q. You said '43; you meant '44, didn't you?

A. I meant the first quarter of '44; I am sorry.

The Court: Well, you referred to the trip around to the various companies to see what kind of progress they were making on the rubber.

A. Yes.

The Court: When was this time you called in Mr. Cornwall; was it before you made the trip or after?

A. Following the trip.

The Court: How long after?

A. Oh, I would say about either thirty or sixty days, somewhere in there.

The Court: You mean up to that time you hadn't done anything except go around and see what the other companies were doing?

A. No. We were doing literature research and also analyzing the art as we found it to be.

The Court: Well, Mr. Cornwall was only one of many who were working in the laboratory?

A. Yes, that is right.

The Court: What was his position?

A. Mr. Cornwall was an experimental mechanic.

(Testimony of Bernard Gross.)

The Court: Did you have other experimental mechanics? [582] A. Yes.

The Court: Did any other experimental mechanics work on this problem?

A. They did work—I had two other experimental mechanics, to be sure, that worked on this project, but not on the development itself, or the thinking itself, which was between Mr. Cornwall and myself.

The Court: Well, did you suggest to Mr. Cornwall that he try putting the rubber O ring inside of a metal washer, or did Mr. Cornwall suggest that to you?

A. I think this situation involved in Lock-O-Seal, as you just pointed out, was the result of an exchange of ideas. Thinking is quite a complex phenomena, but I am sure that the final idea came as a result of our exchange of ideas and finally the jelling of our ideas into what became the device.

The Court: You would say that Mr. Cornwall was the sole inventor of this device?

A. No. I would say that he and I were jointly inventors.

The Court: All right.

Q. (By Mr. Miller): Well, now, as between you and Mr. Cornwall, who suggested putting the rubber ring inside of the metal ring?

A. Well, I will have to repeat an answer that I just gave, that as a result of the exchange of ideas, and thinking [583] that we had, that this configuration came about. We discussed it, the many possi-

(Testimony of Bernard Gross.)

bilities and it all jelled out, it jelled into what we now call the Lock-O-Seal.

Q. Well, somebody had to suggest putting an O ring inside of a metal ring. Now, as between you and Mr. Cornwall, who did it?

A. Well, I am honest when I tell you that it took the thinking of two people to have what has evolved into this device.

Q. Is that the best answer you can give?

A. The thinking processes was a dual thinking process. We went back and forth and as a result of our exchange of ideas, we came up with this.

Q. Well, what ideas did you have?

Mr. Fulwider: Well, your Honor—

The Court: Sustain it.

Q. (By Mr. Miller): What instructions did you give to Mr. Cornwall, when you told him to draw up the sketch, Exhibit 36? I would like to have you repeat those instructions word for word, if you can?

A. After our thinking was complete on this particular Lock-O-Seal that I see here, I instructed him to make a drawing and see that it was made that way.

Q. Well, then, did you tell him what to draw?

A. This again was a result of an interchange of ideas. [584] There are certain people that we use in research, to utilize their thinking, and I had selected him to become involved with me on the thinking involved and necessary to carry on with the Lock-O-Seals.

Q. Well, but now, on that date in December,

(Testimony of Bernard Gross.)

December 21, 1944— A. That is right.

Q. ———you say that you instructed Mr. Cornwall to make a sketch? A. Yes.

Q. And so he made up this Exhibit 36, is that right? A. That is right.

Q. Didn't you tell him what he should draw on that sketch?

A. I could have—what he did was the result of my instructions to make a drawing of what we jointly decided to do.

Q. Well, what did you jointly decide to do?

A. Exactly what is on this print.

Q. Did you ever make up a sample of what was shown on that print, Exhibit 36?

A. Yes, that was made.

Q. Who by?

A. By the personnel of the Rohr Laboratory.

Q. Can you name them?

A. Well, at that time there were probably six people in the group. Leo Cornwall made them, machined the retainer.

The rubber seal ring was made by someone else in the sealing group in a little press that we had there.

Then we had still somebody else who specialized in adhesives, and it was put together just this way.

Q. Was it tested?

A. This was tested, yes.

Q. And what was the result of the test?

A. The test showed that this worked, this seals efficiently.

(Testimony of Bernard Gross.)

Q. Was there a written report made on it as of that time?

A. The only report was the report of the person or the individual in the sealing group that tested this in a test seal.

Q. Was there a written report on it?

A. I say that is the only written report. The laboratory book of the individual who made the pressure test on that particular configuration is the only written report.

Q. Did you have any difficulty on that ring with the rubber extruding? A. No.

Q. Did you approve of that sketch? [586]

A. I don't know what you mean by approve of the sketch.

Q. You say you instructed—— A. Yes.

Q. ——Mr. Cornwall to make a sketch.

A. That's right.

Q. Did he make it and submit it to you after he made it? A. You mean made the sketch?

Q. Yes.

A. Yes. I was always shown the sketches.

Q. Did you approve of it as he had drawn it?

A. Yes.

Q. Did you approve of it as it is right now with the notation on it?

A. Yes. The understanding, as I recall it, was to either vulcanize it or attach it by some adhesive. It didn't make much difference as far as I could see for the purpose of this test.

(Testimony of Bernard Gross.)

Q. Did you know how to vulcanize it and make it attach to the metal at that time?

A. Oh, yes. We had been dealing with cured elasters in aircraft for years. That is what vulcanization is anyway, polymerization of rubber.

Q. Did you suggest the nature of the adhesive that was going to be used?

A. My instructions were to use any adhesive available [587] in the laboratory.

Q. Any ordinary rubber cement would be all right? A. Anything for this test, yes.

Q. Did you instruct Mr. Cornwall to show the rubber ring as being flush with the bottom of the metal ring and extruding at the top only?

A. No. It was known by he and I both that the diameter of the rubber ring had to be greater than the height of the retainer and it is so shown here.

Q. Did you instruct him to show it that way, flush with the bottom and protruding at the top only? A. No.

Q. When *you* showed you the sketch, did you approve it in that form?

A. I approved it because he knew I understood very well from our work before this drawing that the sealing ring had to be greater in diameter and centered. There are no dimensions on this. It is purely schematic.

Q. As you contemplated your screw seal, the rubber ring was to protrude top and bottom of the metal ring? A. That is correct.

(Testimony of Bernard Gross.)

Q. Why is it that this drawing is changed to protrude at the top only?

A. Well, I knew that he knew as well as I did that it had to protrude on both sides. He was well aware of that. [588]

Q. What was the purpose of making up this sketch if both of you knew all of this stuff?

A. Well, this sketch constituted an order to the laboratory and went along with an order to the laboratory to proceed to make this and test it, and the result of that test was put in the laboratory book and it was later submitted to me.

Q. In transmitting to the laboratory, was it given to somebody else besides Mr. Cornwall as an order to proceed?

A. Mr. Cornwall was given this sketch here to proceed with making up and having it tested.

Q. Why did he have to have a sketch when he made it? He knew what was on it.

A. He was not the only one involved in subsequent tests, you see. This went along with the order, with the part he made, and that is the procedure we had, so that the men knew in writing down their test reports just what laboratory sketch was involved there and I would know in turn exactly what was tested, how it was tested and what the net result was.

Q. After you made this test, what further was done with that form of construction as shown in that exhibit?

A. This particular one?

Q. Yes.

(Testimony of Bernard Gross.)

A. It was decided by a conference of the sealing group [589] that we would not go into this particular configuration at that time.

Q. Why were you proposing that particular configuration at all in December 1944?

A. There was some question at that time as to whether the mechanics would have difficulty in the installation of this seal.

Q. Which seal?

A. The Lock-O-Seal or what was then called the screw seal. It was because of this question that we investigated this configuration. However, while this was happening or while this was being tested, I should say, one of the mechanics in our sealing group came up with the idea of using a straight piece of tube to install the Lock-O-Seal onto a bolt. It worked very well and it solved the problem of installing the Lock-O-Seal. It took just an ordinary piece of tube and we didn't have any trouble after that, so we saw no reason why we should go into this at the time because of the need for making new tools and that sort of thing. In the interest of time we went right along with the two-piece Lock-O-Seal.

Q. So after testing what is shown in Exhibit 36 that was put away, forgotten and abandoned, is that it?

A. Well, it was filed, as we say in the laboratory.

Q. Did you do anything further with it, make any further samples? [590]

(Testimony of Bernard Gross.)

A. Not that I recall.

Q. You say this was quite satisfactory?

A. We found it to be.

Q. Did you have any consultation with Mr. Kerley at all pertaining to the development of the Lock-O-Seal?

A. At what time?

Q. In the course of its development.

A. Some things were probably mentioned to him, yes.

Q. Such as what?

A. That such a device was developed, that we were using them on the applications that we were using. I know he was interested in anything that had to do with synthetic rubber, always has been.

Q. Did you ever show Mr. Kerley Exhibit 36?

A. This one? I doubt it very much.

Q. Did you ever describe the construction to him as shown in that exhibit?

A. I don't recall doing that.

Q. It was never mentioned to him at any time by you, is that right?

A. That's right. We made it a practice, particularly during the war, not to talk about anything except the things—where we felt we needed some help from outside, we would mention what we were doing, and other than that we withheld information.

Q. Did Mr. Kerley at any time ask you for the manufacturing rights on the Lock-O-Seal?

A. This was discussed, as I recall it, directly after the war.

Q. Directly after the war?

(Testimony of Bernard Gross.)

A. After the war, yes.

The Court: How long after the patent or the application for the patent was this discussion held?

The Witness: I certainly talked to him after August 1945 about it.

Q. (By Mr. Miller): Did you talk to him prior to August 1945 about it?

A. I believe that we discussed some of the things about it, as I mentioned before, about the device itself, yes.

Q. Did you inform him that you had found an application for patent on it?

A. I don't recall discussing with him anything that had to do with a patent.

Q. Do you recall any discussion with Mr. Kerley that led to a discussion with Mr. Shepard?

A. Well, after the war, I did discuss the possibility with Mr. Kerley of making the Lock-O-Seal. He was interested and I had known him and I certainly tried—I helped him and made an appointment for him to discuss and negotiate for the manufacture of the Lock-O-Seals, yes. [592]

The Court: You made an appointment with whom?

The Witness: This was after the war, your Honor, after August, 1945.

The Court: I say with whom.

The Witness: With Mr. Shepard. Again I say this was after August, 1945, as I recall.

Q. (By Mr. Miller): Did you participate in the discussion with Mr. Shepard and Mr. Kerley?

(Testimony of Bernard Gross.)

A. I think there was one conference where I was present, yes.

Q. Do you recall what was said during that conference?

A. Not particularly, except what I have already told you, that I felt that Mr. Kerley was interested in the manufacture of this device. That is about all I had to do with it.

Q. Was there any statement made there at that time that Mr. Kerley had some interest in this, moral or otherwise, in the development of Lock-O-Seal?

A. No, I don't recall any such inference.

Q. Was he promised the manufacturing rights by Mr. Shepard?

A. As I knew it, Mr. Shepard was in favor of Rohr going ahead with Mr. Kerley manufacturing this device.

Q. Why was Mr. Kerley given this favor?

A. Well, for one thing, I recommended him.

The Court: Mr. Kerley didn't have any manufacturing [593] equipment, did he, that is, he was just an individual, he was working for some other firm? Why would you recommend a man without a shop to be given the manufacturing rights?

The Witness: Your Honor, I did business or I should say Rohr did business, with myself as its representative, during the war on other items which dealt with rubber. I knew of his capacity to deliver. I knew, also, that he was connected, wherever he would be connected, he would still have

(Testimony of Bernard Gross.)

that same ability and I had confidence in what he could do. I had worked with him before and he executed the designs and everything that we had asked him to do before. I had confidence that he would do the same thing.

Q. (By Mr. Miller): At the time of Mr. Shepard's promising Mr. Kerley the manufacturing rights, did Mr. Kerley have any rubber manufacturing facilities of his own?

A. As I recall it and to the best of my recollection at the moment, he was connected with, in some way he was connected with Green and Kyle.

Q. At that time? A. I believe so, yes.

The Court: Did you know him before he was connected with Green and Kyle?

The Witness: Yes, sir. I knew him while he was manager at McClatchie.

Q. (By Mr. Miller): What is the connection between Mr. [594] Kerley and Green and Kyle while he was working for McClatchie?

A. I understand he had an interest in that business and I assumed that he would become part of it.

Q. What did you have to go on to make an assumption like that?

A. Well, I knew from my conversations with Mr. Kerley that he was going to leave McClatchie, and he was interested in Green and Kyle, and I knew he would become part of it in some capacity.

Q. Did you know that he was going to submit the manufacturing rights to McClatchie?

A. I don't recall that at all. I don't recall that

(Testimony of Bernard Gross.)

at all, whether he submitted it or not to McClatchie.

Q. At the time you joined in this discussion with Mr. Kerley and Mr. Shepard, was Mr. Kerley working for McClatchie or was he working for Green and Kyle or was he not working at all?

A. Well, to my recollection I know he was dealing with Green and Kyle, and whether he was still employed with McClatchie, I can't say right now. I don't recall the details of that at all. I knew that he had this connection with Green and Kyle. Whether he was still with McClatchie or not at this time, I am not sure. My confidence in Mr. Kerley was as expressed to Mr. Shepard at the time.

Q. It was merely your confidence in Mr. Kerley as you [595] expressed it to Mr. Shepard that caused Mr. Shepard to promise these manufacturing rights, is that it?

A. You might put it that way.

Q. Mr. Shepard had nothing else to go on as to why Mr. Kerley should be given the manufacturing rights, did he?

A. Well, the executive group worked pretty closely together and I happened to be on the staff. We took each other's word pretty much without question.

Q. I don't think that answers the question. Did Mr. Shepard have anything else to go on except your recommendation? A. No. [596]

* * * * *

Q. (By Mr. Miller): I am not quite clear, Mr.

(Testimony of Bernard Gross.)

Gross. Did Mr. Cornwall make up an actual device in accordance with Exhibit 36, or was it made up under his supervision by somebody else?

A. He made part of it.

Q. Which part did he make?

A. As I recall, he made the retainer ring.

Q. And who made up the rubber ring?

A. I had two men that operated a press for rubber products that made the ring.

Q. Did it take two men to make that ring?

A. Well, actually, two men were assigned to all rubber products, and one had to take care of the press, and the other take care of the dying, making a part.

Q. What were their names?

A. As I recall, there was a Mr. Johnson and Mr. LaVee.

Q. Now, did you ever make up any nuts with O ring seals? A. Yes, sir.

Q. When were those made up?

A. They were made up during the period of the third quarter—the last quarter of '43 and the first quarter of 1944.

Q. And who made those up? [597]

A. The same group were involved that we talked about.

Q. Well, when you say the same group?

A. The sealing group of the laboratory.

Q. That includes whom?

A. Mr. Cornwall and the other members of that group.

(Testimony of Bernard Gross.)

Q. Who were the other members of the group?

A. Well, Mr. Cornwall, Mr. Johnson, Mr. La-Vee, Mr. Shaw, and one other gentleman whose name I just can't think of at the moment.

Q. Over what period of time did they make the nuts?

A. The nuts were made over a period of some four months.

Q. Do you remember how many were made up?

A. I would say in the order of 25.

Q. Were they used?

A. They were used in tests.

Q. Were they ever used in any of the Coronado tanks of the Coronados?

A. No. It was not used on the Coronados.

Q. To your knowledge have any more nuts been made up than these 25 that you mentioned at any time?

Mr. Fulwider: By whom? You mean by Rohr?

Mr. Miller: Yes, by Rohr or somebody connected with Rohr.

A. In the period following the war, there were some [598] made up. There was a continuous project that dealt with sealing and from time to time there were some nuts made up.

Q. (By Mr. Miller): Now, how many of these Lock-O-Seals that Rohr made up were used on the Coronados?

A. I would estimate that there were some 800 per ship and there were seventy some odd ships, Coronado ships, delivered to the Navy.

(Testimony of Bernard Gross.)

Q. And how many Lock-O-Seals were made up by Rohr?

A. I would estimate somewhere between one hundred and two hundred thousand.

Q. Now, what became of the excess of Lock-O-Seals that were not used on the Coronados?

A. Well, some of them were sold and some of them were retained by Rohr for installations, various types of installations in power packages, including water injection tanks, for Lockheed, tanks for the Coronados—not that, I mean the Commandos and other airplanes.

Q. And who were they sold to?

A. Lockheed for Lode Stars and Lockheed Constellations.

Q. Who were some of the Lock-O-Seals sold to?

A. Well, they were sold to Pan American who was operating Coronados also. Some to Lockheed, various naval air bases.

Q. Sold in 1944 and '45?

A. Yes. [599]

Q. Is it necessary to have more information than is contained in your patent, in order to manufacture the seals shown in the patent in suit and have them function properly? A. No, sir.

Q. Do you recall giving a deposition in this case? A. Yes.

Q. At page 50 of the transcript of the deposition, did you not testify——

(Mr. Miller hands deposition to the witness.)

The Court: Page 50.

(Testimony of Bernard Gross.)

Mr. Miller: Page 50, line 19:

“Question. Is it necessary to have those reports in order to design this seal as shown in Figures 2 and 3 of your patent properly?

“Answer. Yes.

“Question. Without having those reports and merely looking at the drawing, you would not be able to make that seal properly, is that right?

“Answer. Yes.

“Question. What is contained in those reports, that is not contained in the drawings and specification of your patent, that is necessary in order to have the seal function properly?

“Answer. Among the things that are required for the [600] successful manufacture of such a device is the physical tolerances that must be met during manufacture.

“Question. Do you recall what those physical tolerances must be?

“Answer. No. You must remember that there were very many sizes involved. I don't believe anybody could remember such a list of tolerances and data.

“Question. Then, in order to manufacture these seals as shown in the Figs. in the patent in suit, that is, your patent, you would have to have more information than what is contained in the patent in order to make a seal that would function properly, is that correct?

“Mr. Lee: I will ask that the reporter read that question again. I believe that question has been

(Testimony of Bernard Gross.)

asked and answered. I would like to hear a previous question about three questions back and the answer to it.

“(Record read by the reporter.)

“Answer. To obtain quality standards, physical tolerances data are necessary.

“Mr. Miller: I move to strike the answer as not being responsive and ask that the question be reread and that you answer the question either yes or no if you can.

“(Question read by the reporter.)

“Answer. I believe I answered that question.

“Mr. Lee: Go ahead and answer it again. [601]

“Question (By Mr. Miller): Either my statement is correct or incorrect, one or the other. Answer yes or no and qualify it if you like. Either my statement is correct or incorrect.

“Answer. I would say yes, with the qualification noted.”

Did you so testify? A. Yes.

The Court: Now, Mr. Miller, may I ask you a question? May I ask you a question?

Mr. Miller: Yes.

The Court: Supposing you have a patent in which there are a number of drawings shown such as we have in the patent here, would those drawings have to show the tolerances? In other words, in the patent, in the drawing, do you have to show the tolerances for 1/1000 of an inch?

Mr. Miller: No, sir.

The Court: You don't have to?

(Testimony of Bernard Gross.)

Mr. Miller: No, sir.

But now there has been a question here or an allegation that we have somehow taken some trade information or trade secrets or something of that character away from Rohr or Wolfe, I don't know which, at least one of the plaintiffs.

The Court: Well, what has that to do with your question?

Mr. Miller: Your Honor, because my next question here [602] deals with the information that wasn't contained in the patent. In other words, we take the position that the patent, when it was published, made a published disclosure to the world of what the idea was. When we designed our Duo-Seal, we did not have anything to do with this tolerance business or the dimension business that they have been talking about; that we designed our own, as far as tolerance and size were concerned; that the patent made its own disclosure.

Now, there is a question here as to whether this patent makes a sufficient disclosure. The witness in his deposition said no, it didn't give you full information, they had to have a whole lot more.

The Court: You had to have the tolerances, you had to know just how accurate you were going to have the washer and O rings, and I would say from the testimony of the various witnesses that testified in this case so far, that the diameter of the O ring, that is the diameter of the ring itself, not the washer——

Mr. Miller: The cross section diameter.

(Testimony of Bernard Gross.)

The Court: —the round part, the diameter of the round part—

Mr. Miller: The cross section diameter.

The Court: —the cross section is a very important thing, because if you got too much, then there would be [603] extrusion, and if you didn't get enough, then it wouldn't fill up the cavities.

Now, I would think that the information relative to the exact cross section of those O rings is very, very important, and yet there is nothing here in the patent to indicate what those cross sections are. Do you have to do that in the patent?

Mr. Miller: Well, if the success or failure of the device as shown in the patent is dependent upon that, then the patent should tell you how to do it.

The Court: I think it is very important, because if the O rings are too big, it won't work, and if they are too small, it won't work. They have to be an exact size. In other words, there has to be just enough rubber in it to fill it up and nothing more, and if there is more, then it will extrude and it won't fit tight and if there is too little, it won't fill up the corners.

But what I am getting at, he said, or rather, the inventors say that they have to have a doughnut shaped ring, but they don't say what the cross section has to be. Do they have to say "1/16 of an inch"?

Mr. Miller: No, but I—

The Court: But do they have to say you have

(Testimony of Bernard Gross.)

to have a different cross section with every different size of a bolt or of the hole? [604]

You don't have to put that in the patent, do you?

Mr. Miller: No, no, unless it is a criterion to the success or failure of it. Then it should point out what that relationship really is.

The Court: Well, as far as I know about this patent, and I will have to admit I don't know as much about it as the inventors or the attorneys in the case, I think the success or failure depends upon the cross section of this O ring.

Mr. Miller: In relation to something else.

The Court: I know, but if there is no O ring there, it would not work, would it? If there was no O ring there, it would not work?

Mr. Miller: With just the washer, no.

The Court: Just the washer?

Mr. Miller: No. That wouldn't be his idea, no.

The Court: Well, it wouldn't work. Well, supposing they put in an O ring that is twice the size of the one needed? It wouldn't work either, would it?

Mr. Miller: That's right.

The Court: So it has got to be the exact size to work.

Mr. Miller: But the patent makes no disclosure.

The Court: My question is whether or not you have to go into minute detail like that. If you did, it would take pages and pages and pages to try to tell just what size it would have to be according to the different sizes of bolts and nuts.

(Testimony of Bernard Gross.)

Mr. Miller: But you point out the relationship, the relative proportions. If there is a certain proportion running right straight through, then you should point that out in the patent. [606]

* * * * *

The Court: I want to go back to this Exhibit No. 36, which is the exhibit of the sketch made 12/21/44. As you pointed out to the witness, the O ring in that particular sketch showed that it exceeded the diameter of the washer only on one side, that it was flush with the washer on the bottom side, but it extended above the washer on the top side.

That is correct, isn't it?

The Witness: Yes, your Honor. I am sure that both Mr. Cornwall and myself understood that the diameter of that sealing ring was to be greater than the height of the retainer, and in that contact—I don't think the drawing was made to infer that it go only out one side. After all, your Honor, we had made many of them already.

The Court: I don't know what was in the mind of the artist or the drawer. All I know is here is a drawing which doesn't show that the O ring extends beyond the washer on both sides, but extends only above the washer on one side. This was drawn and this is a part of your work, and I would [613] like to know why, if you can tell me.

The Witness: I know that this was made and that it worked and that the rubber even under that

(Testimony of Bernard Gross.)

condition there could flow in such a manner as to fill that void.

The Court: I want to call your attention to another thing here. This sketch was made on 12/21/44.

The Witness: That's right.

The Court: Your patent application was October 2, 1944.

The Witness: That's right.

The Court: Your patent application shows an O ring extending both above and below the washer.

The Witness: That's right.

The Court: Why, after you made your patent application, you made your drawings, you showed your O ring extending both above and below the washer, some months later you would make a drawing showing it extended only on one side, I don't know. Can you tell me?

The Witness: That drawing doesn't represent the Lock-O-Seal that was in current production at Rohr at that time. That represents the addition of an adhesive to the O ring.

The Court: Is that all it is trying to show?

The Witness: Yes.

The Court: The addition of the adhesive? [614]

The Witness: Yes. That is the purpose of that drawing.

The Court: You weren't trying to show the relation of the O ring to the washer?

The Witness: No. We were in production on Lock-O-Seals by that time, and all of the seals in

(Testimony of Bernard Gross.)

production had the configuration as shown in that patent.

The Court: This Exhibit 36, then, only has to do with the question of adhesion.

The Witness: That's right.

The Court: This is dated 12/21/44. When did the question of adhesion first come up?

The Witness: After they were being installed on the airplanes, there were some mechanics that found that they were having a little trouble in keeping both components together, and the question came up as to whether we could keep them together.

The Court: Was that before October 2, 1944?

The Witness: No.

The Court: It was not?

The Witness: No.

The Court: So this question of adhesion came up some time between October 2 and December 21, 1944?

The Witness: That's right, yes.

The Court: All right. Excuse me, Mr. Miller. I [615] noticed that and I wanted to clarify it before it got away from me.

Q. (By Mr. Miller): If Exhibit 36 were delivered to a mechanic to make up in your experimental department, you hand him the exhibit, say, "Here, I want this made up," what would you expect to get? Would you expect to get the O ring lopsided or protruding only from the top of the metal ring as shown in that? A. No.

(Testimony of Bernard Gross.)

Q. How is that? A. No.

Q. What would there be on the exhibit to indicate it was not to be made that way by the mechanic?

A. Well, that in effect was a Lock-O-Seal that had the sealing ring, you might say, cemented to the wall of the retainer. In effect, that is what that drawing indicated. Lock-O-Seals were in current production when that came out. This is also a Lock-O-Seal, and instead of depending on the mechanical attachment, this added an adhesive to hold it there.

Q. What is not clear to me is why, if that sketch was merely for the purpose of making a notation that you thought of putting in some adhesive and bonding by means of an adhesive an O ring to the metal, why was it necessary then to make up that sketch? Why couldn't you just make a notation, [616] "We think of attaching the O ring to the metal by gluing it in."

A. Well, actually, this is a sketch which brought out the idea of the cementing the ring and it was taken as a sketch to the laboratory to help in its production.

The Court: Let me ask another question here about this cementing of the ring. You say this sketch is for the purpose of demonstrating the cementing of the O ring to the metal, is that right?

The Witness: Yes, whether it would be of assistance to men installing these Lock-O-Seals.

The Court: One of the things that was brought

(Testimony of Bernard Gross.)

out a little while ago on the question of the proposition of countersinking in the metal was the question of the O ring wouldn't fit exactly right, wouldn't center itself.

The Witness: That's right.

The Court: If you cement the O ring to the washer, it has got to be centered, doesn't it?

The Witness: Yes, and it does.

The Court: In other words, you have got to center into the center of the O ring, that is, you have got to have as much extending over the top as you have extending at the bottom? It has to be centered.

The Witness: Well, this, like all Lock-O-Seals, will center itself, because actually, as is shown in the drawing of the patent, the inside diameter of the sealing ring is in contact with the shank of the fastener, and when you install it on a fastener, it is centered and it stays that way.

The Court: If this Exhibit 36 shows that after it was installed or cemented to the washer, it is not centered, it may not be necessary to have it centered, but that was one of the criticisms that was made a little while ago relative to countersinking, it wouldn't center itself.

The Witness: May I use the board? [618]

The Court: Yes.

(Witness going to blackboard.)

The Witness: This void represents a counter-sunk void. Now, when I put a sealing ring in here,

(Testimony of Bernard Gross.)

it is not necessarily concentric with a hole through here. Let me exaggerate it just a little bit. If the hole were here, and then the fastener was put in, the sealing ring would not be against the shank in its entire outside diameter. You would have a space here.

Now, if we took a Lock-O-Seal, as the patent drawing shows, this diameter is always such that this touches the shank of the fastener, and then when this is installed onto a fastener, this entire seal is free to float and it will of necessity center itself. It can't possibly center itself in this condition.

The Court: I don't know why, if that shaft was in the center of the indentation there——

The Witness: Because this wall here and this wall here are stationary or static, and this can't move in relation to this hole. This can move in relation to this hole. So there is a big difference there.

This is one of the things that actually occurred in attempting to use O rings in countersunk voids. You can't have concentricity. You are depending on perfect machining, which you don't always get, you very seldom get. [619]

So we have a freely floating self-centering device here, and in a countersunk void, you just can't have that because of the concentricity here. This hole is not always centered in relation to this bore here because of the manufacturing difficulties in accomplishing that.

(Testimony of Bernard Gross.)

The Court: Why couldn't it be in the center if you were careful in your countersinking?

The Witness: There are a lot of reasons for that, for this here. When this mates with other sections, there is always an overlapping of holes, and the only way that we can ever get a seal to be freely floating and hence self-centering is to have a device that is free to move with the shank, and this here cannot move with the shank.

In other words, you can't have a perfect hole for a shank of a bolt. There is some tolerance here. The bolt wants to go this way sometimes because there is another hole down here, and unless this sealing ring can move with it, you don't have contact all around the shank.

You will here in any event. It will always go with the shank.

The Court: All right, Mr. Miller. [620]

Q. (By Mr. Miller): Did you know of this distinction that you are just pointing out, now, being pictured in the application for your patent?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Can you explain to me why you included in your patent Figure 5, which shows the nut, wherein the nut is in a recess just at the top of your counter-sink; in fact, it is in the counter-sink in the corner, isn't it?

A. May I see that patent?

Mr. Fulwider: Will you give him a copy of the patent?

(Testimony of Bernard Gross.)

A. Figure 5 is designed so that the portion or the retainer that carries the sealing ring is definitely freely floating and will follow the shank.

The Court: Well, the question was, that nut is counter-sunk, isn't it?

A. Well, your Honor, I just meant to point out that the seal is self-centering, whether it is that Lock-O-Seal there or this nut that he is talking about.

Q. (By Mr. Miller): What I am asking you about is, what is the difference between the self-centering and the nut here in Figure 5 and the self-centering of the——

A. All the difference in the world because this wall here cannot move here with respect to this shank. If this [621] shank moves, this wall cannot move with it. And with that sealing nut, you have a freely floating self-centering seal, just as I explained here. It will move with the nut in the housing, but the housing doesn't restrict it, as you will notice here from that drawing.

Mr. Fulwider: I would like to point out, your Honor, that Figure 5 is not included in the claim of the patent, that it was divided out during the prosecution, as in modified form.

The Court: Well, the question was, does he know?

A. Yes, sir.

The Court: Of this counter-sinking, or did he know of this difference at the time the application was made?

Mr. Fulwider: Yes.

(Testimony of Bernard Gross.)

The Court: And he said he did and then Mr. Miller referred him to Figure 5.

Mr. Fulwider: If the Court please, I want to make the record straight here.

Q. (By Mr. Miller): Now, you prepared in connection with this case—referring to Exhibit 1, did you prepare this?

A. That was prepared under my supervision.

Q. Is that your signature?

A. That is my signature, yes, sir.

Q. Who prepared it? [622]

A. That was prepared by Leo Cornwall.

Q. Do you know where he got these dimensions?

A. Well, these were all accomplished by both calculation and testing.

Mr. Fulwider: What is the date of that, Mr. Miller?

Mr. Miller: This Exhibit No. 1 is dated 5/18/49.

Mr. Fulwider: Thanks.

Q. (By Mr. Miller): Did he do the calculations?

A. Yes. We had to—there are formulas that are available and the patent teaches just exactly how to base your basic calculations, which has nothing to do with the manufacturing tolerances, but the basic relationship between the void and the circular sealing ring is established. One must sink the other one when it is compressed.

Q. Did you in any way participate in the calculations which led to the showing of the Figures here? A. Yes, yes.

(Testimony of Bernard Gross.)

Q. All right. Now, can you tell me in connection with a 5/16 inch nominal, how you went through the calculations to get those figures?

A. Well, basically it was obtained——

Q. I don't want basically. I want to know exactly how you did it. You say you did the calculating or participated in it. I want to know exactly what you did.

The Court: Now, Mr. Miller, will you tell me how [623] important that is in this case?

Mr. Miller: I am still ferreting out trade secret information.

The Court: Well, suppose you rely on the plaintiff to tell us what trade secrets he is thinking that you appropriated. So far you are anticipating defense in this suit.

Mr. Miller: No, your Honor. He has put in eighty odd exhibits and I am still trying to find out what we are accused of and I am in a sad position here where there may be something lurking in these exhibits that he is going to say, "This is what you took away from us." He shot at me with a shotgun and I am trying to track down each and every bullet. That is about all I can do.

The Court: If you do that, we will be here until Christmas.

Mr. Miller: That is a hard part of it. If they had only told us what they were going to accuse us of, I think we could have come up here with an agreement, an agreed statement as to a lot of the facts in this case.

(Testimony of Bernard Gross.)

The Court: I don't think this is material; this was in '49.

Mr. Miller: That is true, but this exhibit was brought in here by the plaintiffs for some reason. It is ancient history so far as we are concerned, but the plaintiffs bring [624] this in here and this is part of these Rohr reports, some of it is on our rubber and some of it is on their rubber, some of it is on rubber he tested himself.

The Court: As to those particular exhibits, what difference does it make how he calculated it, whether he calculated it by a slide rule or by paper and pencil?

Mr. Miller: Then, that certainly can't be this private, confidential information that we talk about.

The Court: I don't know whether he is contending that this is private, confidential information.

Mr. Miller: I don't know either, and I have been trying to find out since the start of this case.

The Court: I think you are anticipating something. Of course, the burden of proof is on the plaintiffs here to show that you appropriated anything. The plaintiff is going to have to say you appropriated this and that, and so on. Now, I am just as much in the dark so far as you are.

Mr. Miller: But here is a large bunch of exhibits. Lurking in there somewhere there may be something. We get accused in interrogatories answers of having taken dimensions.

The Court: Well, you are looking for an Ethio-

(Testimony of Bernard Gross.)

pian in this pile of exhibits, and whether or not there is one in there, I don't know.

Mr. Miller: Well, maybe I did, but in a lawsuit, your Honor, my experience is you can't take any chances. [625]

The Court: I don't think, Mr. Miller, you should try your case here on cross examination, and particularly anticipate what they are going to claim. It is up to them to establish it, and if they don't establish it, if they can't establish it to my satisfaction that you have taken some of their trade secrets, I will grant a motion at the end of their case, but you are fixing it so I can't grant a motion. You are trying to put in a defense here.

Mr. Miller: Well, I am really trying to ferret it out, if there is any.

The Court: Well, maybe I will have to tell you after the case what you are charged with, if you don't find that out yourself, maybe I will have to tell you. [626]

* * * * *

Q. (By Mr. Miller): Mr. Gross, in transmitting these various reports and data sheets, some of those were sent to Mr. Kerley or to the Rubber Teck people and some were sent to the Franklin C. Wolfe Company, were they? A. Yes.

Q. Now, in the course of transmitting your reports and data sheets to either concern, did you make any statement that there was information contained in them that was confidential or secret, that belonged to the Rohr Aircraft Company, that

(Testimony of Bernard Gross.)

they should not use without Rohr's consent, or anything to that effect?

A. That was not included in our letter of transmittal.

Q. Was it included orally? [629]

A. Well, I always believed that that was understood because of the contracts that we had.

The Court: Well, he didn't ask you for your belief. The question is whether it was transmitted orally. You can answer that yes or no.

A. With each report?

Q. (By Mr. Miller): With any of them.

A. Not with the reports, no.

Q. Well, did you at any time tell anybody, Mr. Kerley or Green and Kyle, of the Green Rubber & Machine Company, or Rubber Teck, that the information which you had transmitted was confidential?

A. I didn't tell them directly, no.

Q. Well, did you do it indirectly?

The Court: Well, now, you are asking him to assume. I wouldn't allow him to answer a little while ago as to his belief. Now, the answer is no. Aren't you satisfied?

Mr. Miller: Well, I will stop there.

Q. Now, the effectiveness of these seals to prevent leakage is dependent upon the pressure that the rubber exerts against metal, isn't that true?

A. Not entirely.

Q. What? A. Not entirely.

Q. Well, here, the pressure of the bolt head

(Testimony of Bernard Gross.)

against [630] the metal washer, that alone will not stop the leakage that you were trying to correct?

A. That is right, that is right.

Q. And so you put in the rubber O ring and you squeezed the rubber O ring in order to get pressure against the bolt head and against the wall of the tank, in order to prevent leakage that the washer can't stop, isn't that true?

A. Yes, but that is part of the story only. [631]

Q. Pardon my artistry, but I am going to try to duplicate your O head. Suppose that you had a metal washer with a considerable internal clearance, but still under the bolt head, and you put in an O ring like this. Here is your tank wall. So that there is considerable clearance between the outside of the O ring and the inside of the metal washer, and there was considerable clearance between the inside of the O ring and the shank of the bolt, and then proceeded to tighten up your bolt so that you squashed your O ring so that its vertical diameter became equal to the thickness of the washer. Would that be a satisfactory seal?

A. Well, satisfactory seal, as I pointed out, is dependent on more than just moving or changing the geometry in one fashion, as you just described it.

Q. Well, in the thing I have just described, you would have pressure at point, I will call it 2, and also pressure at point, I will call it 4, when you tightened up your bolt. Would that produce a satisfactory seal that would stop leakage?

(Testimony of Bernard Gross.)

A. Do I understand you right that when this is done that the geometry of the sealing ring will substantially fill the rectangular void?

Q. No. The point that I am getting at is this. After you squash your O ring there is still no contact at point 1 or at point 3. [632]

A. No. Under certain circumstances that would not be adequate.

Q. Regardless of the fact that you would have pressure of the rubber at 2 and 4? A. Yes.

Q. Then I understand from you that it is necessary, in addition to the pressure at 2 and 4, to squash the O ring into contact at 1 and 3.

A. On all four sides.

Q. Now, suppose that the O ring squashes so that it just touches the inside of the washer at point 1, and it just touches the bolt shank at point 3. Would that be sufficient?

A. Not sufficient for a good seal.

Q. In order to have a good seal, for a good seal to be obtained, must you squash the O ring so that it will contact a substantial portion of the vertical length of the washer and a substantial part of the vertical length of the bolt ring?

A. Substantial portion of all sides. [633]

* * * * *

The Court: Mr. Miller, I think you are just wasting time here, because it is the theory of the plaintiff here that you have got to have sufficient rubber to fill the entire area. It is also the theory of the defendant here, as far as their ring is con-

(Testimony of Bernard Gross.)

cerned, that you have to have enough rubber there to fill the entire area. What difference does it make?

Mr. Miller: I am not too positive about that.

The Court: You are not?

Mr. Miller: No. [635] * * * * *

Q. (By Mr. Miller): I show you Exhibit 89; did you prepare this exhibit?

A. We prepared many models such as this. I am not prepared to say that we made this particular one at Rohr. I have no way of telling.

The Court: Well, the question is, did you prepare it?

A. Did I prepare it?

The Court: Personally?

The Witness: Personally, no.

Mr. Miller: "No"?

A. "No".

Q. (By Mr. Miller): Can you look in there and tell me whether or not the rubber O ring there has extruded or not?

A. Well, it appears that there might be some, and this is hard to tell, just looking through that, because of the optical illusions that you may get through such a technique. It is surely difficult to tell that way.

Q. Well, if this has extruded, does that much extrusion make any difference? Does that prevent it from making a proper seal?

Mr. Fulwider: May I inquire, make any difference in what?

(Testimony of Bernard Gross.)

Mr. Miller: Prevent its making a proper seal?

The Court: Well, I understood the witness testified that if there was any extrusion, then it was a defective seal. [638]

The Witness: Yes, sir.

The Court: That in order to make an effective seal, the amount of rubber had to be just sufficient to fill the cavities; if there was any more, then there was extrusion and then it was not a good seal. Now, that is the testimony of the witness.

Mr. Miller: Well, I think that may be getting down to a very fine point. It appears to me that in this exhibit that they produce there is extrusion and the witness seems to state there is extrusion.

Mr. Fulwider: I don't think he so testified.

The Court: He said there may be an optical illusion because of the materials used. May I look at that?

Mr. Miller: Yesterday afternoon, we asked plaintiffs' counsel to supply us with a quarter inch Lock-O-Seal and this is the one we were given yesterday afternoon, and I don't know whether this is a defective Lock-O-Seal or not. As far as I know, it isn't.

Mr. Fulwider: We don't know either, Mr. Miller.

Mr. Miller: And I would assume that this is a perfectly proper Lock-O-Seal and if it is defective, if there is something defective about it, that you will have the opportunity to supply us with a proper Lock-O-Seal.

Mr. Fulwider: We will be glad to supply you

(Testimony of Bernard Gross.)

with some proper ones, if that is not proper. [639]

Mr. Miller: That is right.

Mr. Fulwider: Yes.

Mr. Miller: As far as you and I know, this is a proper one.

Mr. Fulwider: Right. Now, would you tell me what is the rest of this you have in your hand?

Mr. Miller: I have in my hand, which will be supplied to the witness, a block of Lucite with a quarter-inch bolt going through it. I have also another block, an opposed block with a quarter-inch hole going through it. I have an Allen wrench to fit the socket of the bolt so you can hold it against turning, and I also have a nut; a small hand wrench that will fit the nut; and I would like this witness to put the Lock-O-Seal supplied on the quarter-inch bolt, put the block of Lucite on top of it, tighten it down with the two wrenches and see what happens with the Lock-O-Seal when it is tightened. Now, we can look through both sides, that is, through both blocks we have here; whereas we cannot look through the head of the bolt in Exhibit 89, I think was the number.

The Clerk: 89.

The Court: 89.

Mr. Miller: 89.

Mr. Fulwider: If your Honor please, I would like to object at this time to the use of this exhibit that Mr. Miller [640] has just described. I don't know what it is. If he wants to use it, that is

(Testimony of Bernard Gross.)

part of his case, and that is entirely satisfactory, and if it needs rebuttal, we could rebut it.

The Court: What are you trying to prove?

Mr. Miller: I want to find out what is the extrusion here we are talking about, and then ask whether this extrusion exists in the defendant's construction, and also, the witness testified here on direct that if the ring was square and unbonded, that you would have that extrusion.

The Court: All right. Instead of arguing, let the witness do that, and I think we would make more progress.

Mr. Fulwider: There is no foundation at all for these things, your Honor, other than counsel's statement.

The Court: Well, do you deny that that is your Lock-O-Seal?

Mr. Fulwider: No. As far as I can see, it is a good Lock-O-Seal, but I don't know anything about this bolt.

The Court: All right. That is something for the Court to evaluate.

Mr. Fulwider: Yes, just so the record is clear and my objection goes to all this line of testimony.

The Court: Let the record show you object to all these things.

Mr. Fulwider: Right. All right. [641]

Q. (By Mr. Miller): I will ask you to put the Lock-O-Seal on the bolt, and I think the record should show that he put on the O ring first and

(Testimony of Bernard Gross.)

then the washer, and then fitted the washer around the O ring.

Mr. Lee: That is correct.

A. This could be done in several ways. Actually, in installing these, the mechanics have better ways than using their fingers when they put these on, such as I am doing.

Q. (By Mr. Miller): What do you mean, they have some kind of apparatus or mechanism for doing that?

A. They just take a tool and put them on together. Many times it is done that way.

Q. Now, will you put on the upper Lucite block and the nut?

(The witness complies with Counsel's request.)

Q. (By Mr. Miller): Now, before you tighten it down with the wrenches, will you show the Court the condition of the ring before the nut is tightened?

Mr. Lee: I think the record should show that this object being put together is not illustrated in the patent in suit. In other words, in the patent in suit, the washer is put under the head of the bolt and then put up under the surface of the material. In this case the washer is placed between two sheets of material. [642]

Mr. Miller: Well, will you tighten the nut to the head of the bolt?

The Court: I suppose counsel has the right to

(Testimony of Bernard Gross.)

ask him to demonstrate it and it is up to the Court, I think, to evaluate the demonstration.

The Witness: In stock, it is true that we would never use a Lock-O-Seal this way. I am doing it just because it is agreeable that I do something this way. In addition, we would never use Plexiglass in evaluating. When you tighten on Plexiglass, the Plexiglass would yield. The only time we would use Plexiglass is to demonstrate a cross section of how it looks, but for evaluating extrusion, it just isn't done that way.

We use thick metal and we use a torque wrench, not an ordinary wrench, because we in aircraft must have a limit of torque to establish whether or not we have structural integrity. You can't do it with an Allen wrench.

Q. (By Mr. Miller): Well, I am merely supplying the Allen wrench so you can hold the bolt against turning while you turn the hand wrench.

A. That isn't the way that it was done, any more than that is the way to install a Lock-O-Seal.

Q. Will you please tighten up the nut and show the Court whether or not the O ring has extruded from its present unstressed condition to what its condition is after you [643] tighten it up?

A. Well, tighten it how much? We just don't do it this way.

Q. Tighten it as much as you can by holding it with that wrench.

A. Well, that isn't the way they do it, anyway.

Mr. Fulwider: Go ahead and do what he asks.

(Testimony of Bernard Gross.)

The Witness: How much do you want it tightened? I can shear the bolt, if you want me to.

Q. (By Mr. Miller): Give it a fair condition of tightness, a fair amount of tightness.

Mr. Fulwider: How can he testify as to the amount of tightness without a torque wrench?

Mr. Miller: Do you want to use a torque wrench?

The Witness: Actually, a torque wrench is useless when you have a material like Lucite that yields. The way we establish whether or not we have this torque is to use a torque wrench. [644]

The Court: Mr. Miller, what are you trying to establish? Are you trying to establish this seal will extrude and your seal will not?

Mr. Miller: If there is any extrusion, it is equal on all of them, and whether there is or isn't extrusion, I want to be able to show that there is the same amount on this, on ours, and on a square ring, which he said had extrusion.

The Court: What difference does it make?

Mr. Miller: Because he has testified here that it was an unbonded square ring.

The Court: I think you are going off on some immaterial problems here. As I said before, according to the testimony, and I think the testimony is correct, if there is too much rubber there will be extrusion, and if there isn't too much, it will fill the open spaces.

Mr. Miller: The point is, I can demonstrate with this that we do have a comparable amount of extrusion here.

(Testimony of Bernard Gross.)

The Court: What difference does it make whether you have the same amount of extrusion?

Mr. Miller: Because the British patent also has——

The Court: All right. You wait until you get on your case. I have been rather liberal in allowing you to put on your case in cross examination. I don't care, but we are working against time here. The plaintiff hasn't rested and you are going to want some time to put on your case, aren't [645] you?

Mr. Miller: Yes.

The Court: Then leave this matter. I think this is something for you to raise in defense, rather than with the plaintiff's witnesses here. I don't think it is material anyway. I don't think it is going to establish anything in this case.

Q. (By Mr. Miller): Do you own any shares or any interest in Franklin C. Wolfe Company?

A. Yes.

Q. When did you acquire those?

A. Approximately three years ago.

Q. Three years ago? A. Approximately.

Q. Do you own any shares in Rohr?

A. No.

Q. Did you ever own any shares in Rubber Teck? A. Yes.

Q. Did you buy those? A. No.

Q. Those were given to you? A. Yes.

Q. Who were they given to you by?

A. Joe Kerley.

(Testimony of Bernard Gross.)

Q. Did you receive any dividends on those shares? [646] A. Yes.

Q. The book records of the company—well, do you recall how many dividends or what the amounts of the dividends were?

A. I don't recall exactly how much it was.

Q. The book records of the company show that they declared and paid dividends of \$100 per share——

Mr. Fulwider: Object to counsel testifying from the records of the company.

The Court: Sustained. He says he doesn't know. If you want to establish it, you wait until your time comes. You may do so then. He doesn't know.

Q. (By Mr. Miller): Did you sell your shares in Rubber Teck? A. Yes.

Q. When? A. 1954.

Q. And you received how much for them?

Mr. Fulwider: Object to that, your Honor. I don't think that is material to this case at all.

The Court: Overruled.

The Witness: Six thousand.

Q. (By Mr. Miller): Did you threaten to sell those shares to Franklin C. Wolfe at the time of the sale?

A. Will you repeat that, please? [647]

Q. Did you tell the Rubber Teck people, Mr. Karres and Mr. Grass, that you would sell those shares to Franklin C. Wolfe if Rubber Teck didn't buy those shares by 6:00 o'clock one evening?

(Testimony of Bernard Gross.)

Mr. Fulwider: Object to that, your Honor. What has that got to do with this lawsuit?

The Court: Sustained.

Q. (By Mr. Miller): Referring to Exhibit 36, the drawing, did Mr. Cornwall have anything to do with making up the bonded ring shown in that exhibit?

A. Well, he was given the project and it was his responsibility to see that it was done.

Q. If he didn't do it himself, why, it was done under his supervision? A. Yes.

Q. And he saw the rings and knew the rings, did he, knew of them?

Mr. Fulwider: Knew what rings?

Q. (By Mr. Miller): Of the sealing rings that are shown in that sketch that were made up in accordance with it?

A. Yes, he followed through on this.

Q. Were you present in San Diego when his deposition was taken? A. Yes, I was.

Q. Do you recall that he testified that there were no [648] bonded rings made at Rohr while he was there, no bonded sealing rings?

A. I don't recall that statement.

Q. Did you buy the Wolfe shares or were they given to you? A. I bought them.

Q. Now, was some of this test work that you did pertaining to the sealing rings to ascertain whether or not the rubber complied with a military specification? A. Yes.

(Testimony of Bernard Gross.)

Q. Do you recall the number of that military specification?

A. Each test involved more than one military specification.

Q. After the Wolfe Company acquired its license in 1948, was there a new military specification that came out on O rings or sealings rings?

A. Yes.

Q. Do you recall that military specification?

A. No, I don't. You must remember that there were very many hundreds of specifications and I don't remember the numbers of each one.

Q. Would you recall a military specification by the number of 45007.

A. Not by number. [649]

Q. Would you recognize it if I showed it to you?

A. I believe so.

Mr. Fulwider: I would like to object to the use of any defendants' exhibits. I think on the face of it that that is beyond the scope of the direct examination.

The Court: Overruled. I think this is a question of identification only.

Q. (By Mr. Miller): I will show you Defendants' Exhibit T and ask you whether or not that is the specification that you were considering in making the tests after the first of January, 1949.

The Court: Again, Mr. Miller, I have got to say I don't think that the question of the composition of the O rings has any place in this case. There is no claim of any patent on any rubber

(Testimony of Bernard Gross.)

compound or any composition thereof. What difference does it make?

They are not claiming that you are infringing any patent by using the rubber that you are using in your O ring, so what difference does it make? You are making a good record, making a nice record.

Mr. Miller: I am possibly laying some foundation material here for this trade secret second cause of action.

The Court: Well, they don't claim any trade secret as far as the rubber compound is concerned. They can't claim any trade secret as far as the O ring is concerned, that is [650] the shape of the O ring, and they can't claim any trade secret as far as the rubber is concerned. I don't know what trade secret they have got about the O ring.

Mr. Miller: Here is a large number of paper exhibits, of the reports, and so forth.

The Court: You just wait until the plaintiff is through, and if the plaintiff attempts to assert in any way that they have any trade secrets relative to the making of the rubber compound or the making of the O ring, I will let you go into this, but I think it is premature at this time. I don't think it has any place in this case.

I would have been smart to have sustained your objection when you first made it, that is what I should have done, relative to these tests, but I didn't know what they were doing. [651]

* * * * *

(Testimony of Bernard Gross.)

Redirect Examination

Q. (By Mr. Fulwider): Mr. Gross, I draw your attention to Exhibit 42. What does that represent? I believe it is a wing section, is it not?

A. Yes, that is the so-called center section of the Coronado seaplane.

Q. Does that represent the tank on a Coronado?

A. Yes. There are four fuel compartments in this center section.

Q. And what is the capacity of that tank on the Coronado in Exhibit 42?

A. They total 4400 gallons. At six pounds a gallon, it would come to approximately six tons capacity.

Q. Six tons, you say? A. Of fuel, yes.

Q. Approximately how long is that center section tank?

A. It is approximately, it is between 65 and 70 feet long. [652]

Q. How was it handled when you wanted to transport it from one place to another?

A. It required a crane.

Q. Was this wing section tank shown in Exhibit 42, which I understand is from the first PB2Y you used in the sealing program, ever brought into the Rohr laboratory? A. No.

Mr. Miller: I am going to object to this line, your Honor, as improper redirect.

The Court: Sustained. Of course, there is testimony there was a tank in the Rohr laboratory, but

(Testimony of Bernard Gross.)

no testimony it was a tank this size. It was a small tank, as far as I know.

Mr. Fulwider: That's right, your Honor. [653]

The Court: Objection sustained. Of course, there is testimony that there was a tank at the Rohr Laboratory, but there is no testimony that it was a tank that size. It was a small tank, so far as they know.

Mr. Fulwider: That is right, correct.

The Court: And it was just for experimentation, of course.

Mr. Fulwider: That is the entire purpose of this testimony, to meet head-in the testimony of Mr. Kerley yesterday that he had a small tank.

The Court: There is no evidence that this tank was ever taken into a laboratory.

Mr. Fulwider: I grant you that this is preliminary to the next question.

The Court: What is your next question? Go ahead.

Mr. Fulwider: Two questions.

Q. Where was the tank, Exhibit 42, kept at Rohr?

A. In a restricted area, outdoors.

Q. Was it the first tank you ever used in testing Lock-O-Seals? A. This one——

Mr. Miller: I object to this.

The Court: Overruled.

Q. (By Mr. Fulwider): During the development of the Lock-O-Seal, prior to the completion of the invention I will [654] say, was there ever

(Testimony of Bernard Gross.)

a tank in the Rohr Aircraft laboratory that was used by you in testing fastener seals?

A. No.

Q. How did you test the fastener seal of the Lock-O-Seal that you made at Rohr at the time of the invention and immediately prior?

A. All the preliminary tests were carried on in a small cell as shown by the exhibit here. It was eight inches high by three or four inches wide. This was a preliminary test. That involved air only. Then, the seals that appeared to pass the pressure test were taken out to this structure here, this center section structure.

Frion gas was used by pressurizing the entire tank area to about a pound and a half per square inch pressure, and then the acetylene flame was used and all of the fasteners were scanned outside with a flame. A leak sometimes which would ordinarily not show up in a short period of time even with fuel would readily show up, by turning the yellow flame green.

After this test was made, the entire tank areas were filled with aviation gas and allowed to remain in the tanks some 24 hours to determine whether or not there was any effect of the fuel on the sealing ring.

Q. And this tank, this center section tank that you have been discussing was always outside of the Rohr Aircraft laboratory? [655]

A. Yes, definitely.

Q. Did you ever have any conversation with Mr.

(Testimony of Bernard Gross.)

Kerley while standing at this center section tank concerning Lock-O-Seals? A. No, sir.

Q. Did you ever have a conversation with Mr. Kerley in the laboratory standing adjacent or near or in view of a test tank concerning Lock-O-Seals?

A. No, sir.

Q. Did you ever have any conversation with Mr. Kerley concerning the solving of the fastener seal problem, before the invention was completed?

A. No, sir.

Q. Do you recall any conversation with Mr. Kerley at any time when he suggested to you solving your sealing problem by counter-sinking?

A. Do you mean prior to the invention?

Q. Yes. A. No, sir.

Q. Now, you were here and heard Mr. Kerley testify yesterday, were you not? A. Yes.

Q. And I believe he described a tank in the Rohr Laboratory as two to ten feet long and about two feet across. I forget how high it was. You heard the testimony? [656] A. Yes.

Q. Was there any such tank in the Rohr Laboratory prior to the completion of the—that is a little too broad—from the time that you started working on the sealing problem about which you have previously testified, and the completion of the Lock-O-Seal invention? A. No, sir.

Q. And did you ever stand with Mr. Kerley—well, you couldn't, of course. Did you ever have a conversation with Mr. Shepard concerning—Mr.

(Testimony of Bernard Gross.)

Shepard of Rohr—concerning the filing of the patent application on the Lock-O-Seal invention?

A. No, sir.

Q. Did you ever have any conversation concerning the Lock-O-Seal invention with Mr. Shepard prior to July of 1945? A. No, sir.

Q. '45? A. No, sir.

Q. Did you have any conversations with Mr. Shepard prior to July, 1945, concerning patents at all, any patents? A. No.

Q. Did you ever have a conversation with Mr. Kerley in which he stated to you that he felt he had contributed something to the Lock-O-Seal idea or the Lock-O-Seal [657] invention?

A. No, definitely.

Q. Did Mr. Kerley ever make such a statement to you? A. No, sir.

Q. Did you ever have a conversation or did Mr. Kerley ever state to you that he thought he ought to have some preference or rights or manufacturing rights in the Lock-O-Seal? A. No, sir.

Mr. Miller: Now, your Honor, I don't believe this is proper redirect. I think this is rebuttal.

The Court: Well, on your examination of other witnesses, of Mr. Kerley, he was allowed to testify as to what happened. When you have this witness on the stand, why not let him testify? Objection overruled.

Q. (By Mr. Fulwider): Did you ever have a conversation with Mr. Shepard at Rohr in which you told him that Mr. Kerley had contributed any-

(Testimony of Bernard Gross.)

thing to this invention? A. No, sir.

Q. Did you ever hear Mr. Kerley ever make such a statement to Mr. Shepard? A. No, sir.

Q. Or in Mr. Shepard's presence?

A. No, sir.

Q. Did you ever tell Mr. Shepard that because of Mr. [658] Kerley's activities, you thought he should have preferential treatment in the granting of manufacturing rights or other rights?

The Witness: Would you repeat the question?

Mr. Fulwider: Perhaps I had better rephrase the question.

Q. Did you ever tell Mr. Shepard that you thought that Mr. Kerley had assisted in making the invention, therefore should have a preference?

A. No.

Q. Did you at a later time have any conversation with Mr. Kerley in which he asked you to assist him in getting the manufacturing rights on the Lock-O-Seal either for himself or for some company with which he was or would be associated?

A. Yes.

Q. Will you tell me about that conversation?

A. Well, he definitely indicated that he was interested in the manufacture of Lock-O-Seals at that time and prior to that time——

Mr. Miller: Will you set the time, please?

The Witness: What is that?

Mr. Miller: Will you set the time? You say at that time.

(Testimony of Bernard Gross.)

Q. (By Mr. Fulwider): Approximately when was that? [659]

A. Well, that was after the war.

Q. You mean after August?

A. After August, 1945.

Q. All right.

A. And sometime within the year following the war, the best I can recollect at the moment.

Q. And what did you say? Did you tell him that you would try to assist him in getting such rights?

A. I told him I certainly would do everything to help him to get the manufacturing rights.

Q. Did you subsequently mention that fact to Mr. Shepard? A. Yes.

Q. Of the Rohr Aircraft? A. Yes.

Q. Was there subsequently a conference between you and Mr. Shepard and Mr. Kerley?

A. Yes.

Q. Having to do with manufacturing Lock-O-Seals? A. That is right.

Q. Did Mr. Shepard in that conference at which you were present say anything that would tend to indicate in any way that he felt that Mr. Kerley had any right to get the manufacturing privilege, any vested interest in it? A. No. [660]

Q. For whom was Mr. Kerley negotiating to secure the manufacturing rights on the Lock-O-Seal when you and he called upon Mr. Shepard at Rohr?

A. Green and Kyle.

Q. Do you know whether or not Mr. Kerley

(Testimony of Bernard Gross.)

subsequently brought Mr. Green or Mr. Kyle down to the Rohr Aircraft plant to continue negotiations?

A. Yes. I wasn't in on that, and I don't recall which one it was, Mr. Green or Mr. Kyle. I wasn't in on it, those negotiations. [661]

Q. Did you ever tell Mr. Kerley that in your opinion a one-piece Lock-O-Seal would not work or could not be made satisfactorily? A. No.

* * * * * [662]

Recross Examination

Q. (By Mr. Miller): On this tank that you spoke about, wasn't a center section cut away and brought in or shipped in?

The Court: Into where?

Mr. Miller: Into the Rohr laboratory or in the vicinity of the Rohr laboratory.

The Witness: The center section was delivered by the Navy to Rohr Aircraft.

Q. (By Mr. Miller): And what was the size of just the center section that was delivered?

A. The center section was approximately, as I said, some 65 feet long by—considering the fairing for the hull—it was approximately five feet high, and from fore to aft it was approximately eight feet. Then this center section had to be supported by a cradle for a suitable support while it [664] was being worked on.

The Court: Mr. Miller, this witness testified originally that the picture showed the center section of the tank. That is the center section he is talking

(Testimony of Bernard Gross.)

about now, the thing he identified a little while ago.

Are you trying to ask him if some portion of that center tank was cut off and came into the laboratory?

Mr. Miller: That wasn't very clear to me, your Honor. I am not very clear as to what was the length of the tank before the center section was even cut out of it, and then what was the size of the center section.

The Court: The testimony was that this was part of the wing, and this is the center part of the wing, the center section of the wing or the tank, or the wing that held the tanks, the center section is 70 feet long.

Was any part of that center section cut away and taken into the laboratory that you can recall?

The Witness: No, your Honor. The fuel compartments in the center section are the same thing.

The Court: Was any other part of the wing that held gas, was any part of that ever taken into the laboratory?

The Witness: No, your Honor. The center section remained intact as delivered by the Navy.

The Court: And that is the only thing you got from the Navy, is that it? [665]

The Witness: That is right.

The Court: The center section.

The Witness: That's right.

Q. (By Mr. Miller): Did you have any other tank in or around the laboratory?

A. Not at that time, no.

(Testimony of Bernard Gross.)

Q. At any time?

A. Not prior to the invention.

Q. What? A. Not prior to the invention.

Q. What was the size of this other tank?

The Court: What difference does it make if it came in after the invention? We are talking about before the so-called invention. Your witness says there was a tank there. This witness says there was no tank there.

Q. (By Mr. Miller): You have related a number of conversations that you had with Mr. Kerley. Do you recall testifying in your deposition as follows at page 60, line 17:

“Q. Do you know Mr. Kerley?

“A. Yes.

“Q. How long have you known him?

“A. Approximately since 1944.”

And at page 62, line 15:

“Q. When you contacted Mr. Kerley, will you relate what the conversation was that you had with [666] Mr. Kerley?

“A. I don’t recall the details of what was discussed at that time.”

Do you recall so testifying?

A. Yes.

Q. Do you recall any conversation with Mr. Kerley at which Mr. Karres was present?

A. At Rohr?

Q. Yes. A. No.

Q. You never saw Mr. Karres at Rohr with Mr. Kerley? A. Prior to the invention, no.

(Testimony of Bernard Gross.)

Q. I don't care about prior to the invention.
At any time? A. He did visit Rohr.

Q. With Mr. Kerley?

A. I was thinking in terms of dates, but after the invention he did visit Rohr with Mr. Kerley, yes.

Q. When he visited Rohr, did he talk to you with Mr. Kerley?

A. Mr. Kerley introduced Mr. Karres to me.

Q. And did the three of you engage in a conversation? A. Yes.

Q. And what did that conversation pertain to?

A. I don't recall what went on during the conversation [667] except that it was—we became acquainted with each other.

Q. Did you have more than one meeting with Mr. Kerley at which Mr. Karres also was present?

A. I would recall at least one.

Q. During that conversation wasn't the matter of bonding the rubber to the metal ring discussed?

A. No.

Q. What was discussed during this conversation that you do recall when Mr. Karres was present?

A. Again, I recall the matter of becoming familiar with Mr. Karres.

Q. Do you recall anything else about the conversation? A. No.

Q. Why he was there? A. No.

Q. Do you recall why Mr. Kerley was there?

A. Well, to repeat, Mr. Kerley brought Mr.

(Testimony of Bernard Gross.)

Karres in for the purpose of introduction and to become familiar with Mr. Karres.

Q. That was all that was said during this conversation, Mr. Kerley brought Mr. Karres in and introduced him, and after you said how do you do, they left and you went on about your business?

A. I don't recall the contents of the visit except that it was for the purpose of introducing Mr. Karres. [668]

Q. Was McClatchie Manufacturing Company the only source of rubber goods that you had there in 1944, 1945 and 1946 for use on Rohr equipment?

A. No.

Q. You had other rubber suppliers?

A. We had other vendors, that's right.

Q. Can you give me a rough idea of how many? Would it be a dozen?

A. There would be a number of them. The exact number, I wouldn't know. I didn't have directly to do with the procurement of all items.

Q. Did you contact the representatives of these other rubber suppliers?

Mr. Fulwider: May I have the question read?

(Question read.)

Mr. Fulwider: I object, your Honor. It is getting too far away.

The Court: Sustained. I don't know, Mr. Miller. This witness denies the conversations and it will be a question for the court to determine whether the recollection of this witness is better than the recollection of the other witness.

(Testimony of Bernard Gross.)

Q. (By Mr. Miller): Why did you tell Mr. Kerley that you would help him to get the manufacturing rights in preference to these other rubber suppliers? [669]

A. I had experience with Mr. Kerley during the war. He had done a very fine job of producing a great number of a chafing strips for power packages that we were producing. He delivered on time and its quality was excellent and he was dependable. I had every reason to believe that he would do a good job with the Lock-O-Seals.

The Court: May I ask a question?

Mr. Miller: Yes.

The Court: Why did Mr. Kerley give you this stock which was later sold by you for \$6,000?

The Witness: Your Honor, as I understood it, he gave me the stock, explaining that Rubber Teck had a good future, that they would have new products, and that he was sure I could help them by way of a consultant, in the capacity of a consultant.

The Court: Was this stock given to you for services that were to be rendered in the future or services in the past?

The Witness: As I understood it, for services that were to be rendered.

The Court: To be rendered?

The Witness: That's right.

Q. (By Mr. Miller): Were you ever consulted by Rubber Teck or Mr. Kerley after you were given the stock? A. Regarding—— [670]

The Court: You can answer that yes or no.

(Testimony of Bernard Gross.)

The Witness: Yes.

Q. (By Mr. Miller): When was this, when were you consulted?

A. Well, during the time that followed the issuance of the stock, I would say approximately 1952 or 1953, in there.

Q. Pertaining to what?

A. Pertaining to the selection of an all-purpose rubber. A new specification came out, as I recall it——

Q. In 1952?

A. Well, it was prior to 1952 that the specification came out, but their interest in the spec was new.

Q. Did you make any recommendation or written report on this all-purpose rubber?

A. Well, we discussed it, yes.

Q. Who did you discuss it with?

A. Joe Kerley.

Q. Anybody else? A. No.

Q. Do you recall where that discussion took place?

A. Well, he visited at my home on occasion and it might have been there, or it might have been out at a lunch.

Q. Did you do any test work for him on this all-purpose rubber and make any kind of a written or oral report to him as to what you would recommend being adopted by [671] Rubber Teck?

A. No. I say again we discussed the usage of rubber in some possible new products, but no for-

(Testimony of Bernard Gross.)

mal work was done, as far as I know, or any reports rendered on that basis.

Q. Are you a rubber compounder?

A. No. I might add that I taught aircraft materials for some years, though. [672]

* * * * *

Redirect Examination

Q. (By Mr. Fulwider): This morning you fixed the date of July, 1945, as not having previous conversations with Mr. Shepard. Will you tell the Court how you fixed that date of July, 1945, with respect to Mr. Shepard?

A. In July, 1945, was the time that there were changes made in the executive staff of Rohr Aircraft. Among the changes that were made, the changes that were made involved the appointment of Mr. Shepard, Mr. S. W. Shepard as a secretary of the corporation and counsel, who took the place of Mr. Frank Nottbusch, who had served in that capacity all during the war and who had the responsibility of patent matters.

Mr. Shepard, on the other hand, had worked in the insurance office.

The Court: He doesn't have to go into that.

Q. (By Mr. Fulwider): That is the way you fixed the [673] date in July, 1945, when Mr. Shepard became secretary? A. Yes.

* * * * *

PAUL A. KARRES

one of the defendants herein, called as a witness by the plaintiff, being first duly sworn, testified as follows:

* * * * *

Examination

Q. (By Mr. Fulwider): As I understand it, Mr. Karres, you are president of Rubber Teck?

A. That is correct.

Q. And one of its directors? A. Yes, sir.

Q. A stockholder? A. Yes, sir.

Q. How long have you been a director and stockholder of Rubber Teck?

A. Well, I would say practically since the latter part of '47.

Q. Do you recall what month in '47?

A. No, sir. [674]

I am sorry, I don't.

The Court: Counsel, don't you think the record should show that you are calling this witness as an adverse witness?

Mr. Fulwider: Yes, thank you, your Honor, under 43(b). [675]

* * * * *

Q. You had a distributor at one time or a selling agent by the name of Randal & Associates, is that correct? A. That is correct.

Q. And as I understand, that is a corporation?

A. Yes. That is not in existence at this present time.

Q. It is inactive now?

A. It is inactive.

(Testimony of Paul A. Karres.)

Q. When did it become inactive?

A. Well, it was approximately a year and a half now, I assume. I don't know the exact time.

Q. And I believe you and Mr. Glass were directors and officers of that corporation when it was acting as agent?

A. That is not correct.

Q. What was your connection with the company?

A. With Randal Associates?

Q. Yes.

A. That is an entirely different organization. I do have a connection there, though.

Q. What is that connection?

A. Well, I was at the time their chairman of the board.

Q. What does Randal Associates Corporation do? Does it have any business now?

A. No, sir. [680]

Q. I believe there was also a Randal Company?

A. That is right.

Q. That was connected with Rubber Teck?

A. No connection.

Q. Was that a partnership?

A. That was a partnership.

Q. Who were the partners?

A. Myself, Andrew Karres, John Siamas and Alex Siamas.

Q. Who was Andrew Karres?

A. My brother.

Q. Was that also a selling agent or distributor or something like that?

A. No, sir.

(Testimony of Paul A. Karres.)

Q. Does it have any connection now with Rubber Teck? A. It never has.

Q. Do you know Mr. Robert Elem?

A. Yes, I do.

Q. He was employed by one of those Randal companies; which one was it?

A. Randal Associates.

Q. That was the corporation?

A. He was a stockholder.

Q. Yes. Was he also a director? A. Yes.

Q. An officer? [681] A. Yes.

Q. What office did he hold?

A. I believe it was vice president. I am not positive at the moment.

Q. When did Mr. Elem come or join with Randal Associates?

A. I couldn't give you the exact dates; I don't recall them.

Q. Approximately when?

A. When? Well, shortly after he was discharged by Franklin C. Wolfe Company.

Q. That is, he left Franklin C. Wolfe Company and then joined Randal Associates?

A. I don't believe—I think he was discharged.

Q. Well, by letter? A. Correct.

Q. Or whether he was discharged on his own power, I won't argue with you.

A. That is right.

Q. Had you known that he had been a salesman for Wolfe Company prior?

A. Oh, definitely I knew it.

(Testimony of Paul A. Karres.)

Q. You knew he was an employee of the Wolfe Company before he became associated with your Randal Associates?

A. Yes, I definitely knew it, because the Wolfe Company was our representative on everything.

* * * * *

Mr. Fulwider: Yes. I believe the latter date is early 1951.

Q. Prior to that time, Rubber Teck had been drop shipping for the Wolfe Company, hadn't they?

A. That is correct.

Q. Will you explain briefly what drop shipping procedure is as between Rubber Teck and Franklin C. Wolfe at that time?

A. You are talking about prior to what particular time, now?

Q. During the entire time that Rubber Teck drop shipped for Wolfe.

A. Well, drop shipping is very simple. We receive the orders from the Franklin C. Wolfe Company and we would ship them to the customer.

Q. The Wolfe Company sends you a copy of the invoice?

A. Yes, I believe that is the way it was operated. They did the billing on their own Lock-O-Seals.

Q. And they sent you a copy of that invoice to give you information with which to ship?

A. To whom to ship?

Q. Yes. A. Yes.

Q. And where to ship? A. That's right.

(Testimony of Paul A. Karres.)

Q. So as of that time you automatically knew all of the customers of the Lock-O-Seal?

A. I should know. They were my representatives. They had to call on the people anyway to sell my item. Doesn't that stand to reason?

Q. I wasn't asking you for the reason. I was merely asking for the facts, that you did know all the customers as of that time.

A. I should know them. They were my representatives. That is what they were being paid for.

The Court: Suppose you just answer the question and we won't waste time.

The Witness: Very good, sir. I am sorry, your Honor.

Q. (By Mr. Fulwider): I call your attention to Exhibit [689] 9——

The Court: During this period of time you made other things other than seals, didn't you?

The Witness: Thousands of things that they represented us on.

The Court: I beg your pardon?

The Witness: Thousands of things that they represented us on.

The Court: Thousands of items?

The Witness: Well, that might be putting it a little too strong, but it would be quite a number.

The Court: But they represented you on the other items that you manufactured?

The Witness: Definitely.

The Court: As well as the seals.

(Testimony of Paul A. Karres.)

The Witness: Definitely. They called on the same people.

Q. (By Mr. Fulwider): Now, in that connection, Mr. Karres, did you have any other proprietary items that the Wolfe Company sold for you?

A. We had them, but they didn't seem to be interested in them. They didn't do the job for us.

Q. I didn't ask you that. A. Yes, sir.

The Court: That is a conclusion. You can answer [690] yes or no.

The Witness: Yes.

Q. (By Mr. Fulwider): What were they?

A. There was a connector that we were licensed by Northrop.

Q. You wanted them to sell that but they never did handle the sales of that?

A. Yes, they handled sales of it, but they didn't do anything about it. They didn't like it.

Q. They didn't like it? A. No.

Q. So they didn't handle it?

A. That is correct.

Q. What other proprietary items of the thousands you mentioned?

A. That was all at that time.

Q. You had this one proprietary item?

A. That is correct.

Q. That was a coupling? A. Yes.

Q. I believe, if I remember now, you have brought up that there were conversations between you and the Wolfe Company in which they did not

(Testimony of Paul A. Karres.)

care for the product, did not wish to sell it, is that right?

A. Evidently that is as close as you could say it, the [691] way they said it.

Q. Now, the balance of these thousands of items that you sold——

A. Well, that could be — I probably elaborated when I said thousands. Quite a few.

Q. Those were in the nature of custom rubber work? A. Yes.

Q. Didn't the Wolfe Company bring in to you orders for you to fill? A. Oh, yes.

Q. To the customer's requirements?

A. That's right.

Q. Their selling activities, other than Lock-O-Seals, constituted largely getting for you the chance to make the rubber parts designed by the companies? A. Yes, that's right.

Q. The customers. A. That is correct.

Q. Referring to Exhibit 9, will you identify that for me?

A. Yes. This is our advertising publicity, Rubber Teck, Inc.

Q. Is that what you might say is in the nature of a scrap book?

A. Yes. This belongs to the advertising company, the [692] McCarthy Company, and they loaned this to me.

Q. And this has exemplars of various advertising put out by Duo-Seal, or by Rubber Teck?

A. That is correct.

(Testimony of Paul A. Karres.)

Q. Is there any advertising in here pertaining to Duo-Seals? A. Yes.

Q. Whereabouts is it?

A. Well, here are some cuts here.

Q. On one page of this there is a Duo-Seal data sheet No. 1104-D. Does that represent the data sheets that you put out, Rubber Teck distributed to the trade? A. Yes.

Q. Do you recall who composed this portion of the data sheet 1104-D, being a legend which reads as follows:

“The Duo-Seal is a one-piece washer and O ring combination with the O ring permanently bonded to the washer.”

Do you happen to know who authored that sentence in that advertising piece for Duo-Seal?

A. No, I don't know who authorized it. I know it is strictly—it is just an engineering data sheet for the engineers on particular sizes. I don't know exactly who did put that particular wording in there, let's put it that way.

Q. Did you authorize all of the advertising matter that [693] went out from Rubber Teck?

A. Yes, authorized, yes.

Q. Did you authorize this data sheet 1104-D?

A. Yes.

Mr. Fulwider: I would like to offer Exhibit 9 in evidence. I believe it has not been admitted.

The Court: It may be received in evidence.

The Clerk: Exhibit 9.

(The exhibit referred to was received in evi-

(Testimony of Paul A. Karres.)

dence and marked as Plaintiffs' Exhibit No. 9.)

[See Book of Exhibits.]

Q. (By Mr. Fulwider): Do you recognize this letter, Exhibit 13? A. Yes, I do.

Q. That came to Rubber Teck from Wright Air Development Center, I believe?

A. That is correct.

Q. About the date it bears or shortly thereafter, rather? A. Shortly thereafter, yes.

Q. This letter mentions Rohr Laboratory Reports 182, 192, and 192-1, as having been enclosed with a letter from Rubber Teck. A. Yes.

Q. Do you recall that incident?

A. I don't exactly recall it, but I am sure it happened. [694]

Q. You are sure——

A. I am pretty sure, yes.

Q. You are pretty sure you or Mr. Kerley sent these reports? A. Yes.

Q. Now, that refers to Rubber Teck letter dated 16 February 1954. Have you been able to find that letter, Mr. Karres?

A. No, I haven't. I have also written to Wright Field and they don't have a copy of it. [695]

Q. (By Mr. Fulwider): I believe that was included in the subpoena that was served on you?

A. That is correct.

Q. And did you make a search after you got the subpoena?

A. Yes, we have searched at the factory, and we have also contacted Wright Field. Now, we have

(Testimony of Paul A. Karres.)

also contacted them personally by phone. There was a letter and my representative back there called on them quite some time ago.

Q. Do you have a regular Wright Field file?

A. Well, yes. The file that I have includes those various things that come from Wright Field, but it is not in it either.

Q. My point is you have a regular correspondence file for Wright Field?

A. Yes, that is correct.

Q. And I assume that is where the letter ought to be?

A. That is where the letter ought to be.

Q. Do you know of any other letters that are missing out of this file?

A. No, I don't know.

Q. In fact, that is the only one you have been able to find, isn't it?

A. That is the only one. Incidentally, it is kept in [696] the engineering department at the factory.

Q. Now, in connection with the tests represented by the three reports mentioned in the letter, Exhibit 13, did you ever advise anybody at Rohr that you wanted those tests run on your rubbers so that you could get Government approval on a rubber that you planned to use in competition with the Wolfe Company?

A. In competition with the Wolfe Company?

Q. Yes. A. No, sir.

Q. Did you ever advise anyone at Rohr prior to the time that the Duo-Seals came on the market

(Testimony of Paul A. Karres.)

that you were going to market a one-piece seal, fastener seal? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you ever advise anybody at Wolfe Company that you were going to market a one-piece seal in competition with Lock-O-Seal and with Stat-O-Seal? A. No, sir.

Q. When did Rubber Teck first offer the Duo-Seals to the trade, so we get that date tied down?

A. You mean in production or do you mean when it was offered?

Q. When it was offered? [697]

A. It was sometime in '53, the latter part of '53.

Q. This was when you actually offered them for sale, whether you had them in hand or not?

A. Probably in '53.

Q. Would it have been November 20, 1953?

A. I believe that is pretty close.

Q. The reason I say that date, that is the date of the Reischauer letter, Exhibit 11.

A. The Reischauer letter?

Q. I might show that to you.

A. I know what it is.

Q. And this Exhibit 11 was a letter written by Rubber Teck, signed by Aldrich or composed by Aldrich. A. Yes.

Q. To Reischauer. Now, your recollection is that that was the first offer of Duo-Seals to the trade?

A. Yes. We might have offered them a short time before that. We had put out a lot of samples.

Q. Do you think you might have put out sam-

(Testimony of Paul A. Karres.)

ples before November 20? A. Possibly.

Q. And how long before?

A. I don't know. I don't have any recollection.

Q. I believe in your deposition, in answer to the same question, you put November 20 as your first offer of sale? [698]

A. Sale.

Q. Yes.

A. I said samples had been given out, but not for sale.

Q. I see. A. That is correct.

Q. Your concept is that you gave out samples before you offered them for sale?

A. That is correct. We had no production tooling to do anything with them.

Q. Now, speaking in terms of the Reischauer letter, November 20, did you, when that letter was written, say that you are now in position or would be shortly to supply Duo-Seals? Did you at that time have production molds?

A. No, sir. This was all in anticipation of the trade accepting the product itself.

Q. That is, if you got an order from Fletcher pursuant to this letter, Exhibit 11, then you would go ahead and get up the production molds?

A. Yes, sir.

Q. For the Duo-Seals? A. That is right.

Q. Had you submitted any samples of Duo-Seals to Fletcher prior to this letter, Exhibit 11?

A. There might have been. I don't have any [699] recollection of it.

Q. You don't recall? Do you recall whether you

(Testimony of Paul A. Karres.)

got an order from Fletcher for Duo-Seals pursuant to that date of November 20?

A. I don't believe we ever got an order from Fletcher on Duo-Seals.

Q. You haven't sold them?

A. Not Duo-Seals. Lots of O rings.

Q. No Duo-Seals? A. No Duo-Seals.

Q. Can you tell me whether or not you had your printed literature on Duo-Seals prior to this letter to Reischauer on Exhibit 11?

A. I believe there was, yes.

Q. Can you tell me when the first literature was printed?

A. The date I can't give you; I don't know the exact date.

Q. Did Mr. Glass know that date?

A. I don't believe so.

Q. Exhibit 10. Would you find that out for me over the lunch hour, when the first literature was printed?

A. If I can look back in the advertising book, I think I could tell you from that. That would have the date on that. [700]

Mr. Fulwider: Exhibit 9.

Mr. Lee: No, it is not in 9, in 10.

Mr. Fulwider: Where is 10?

Mr. Lee: It is in here.

The Witness: It ought to be in 1954. There might have been some earlier than '54. I couldn't tell.

(Testimony of Paul A. Karres.)

Q. (By Mr. Fulwider): From examining Exhibit 9, it appears that the earliest was '54?

A. 1954, yes, practically all of them in '54. They have put the dates on them.

Q. And this one I mentioned to you awhile ago, data sheet 1164-D, does that carry a date at all?

A. It doesn't there, unless it is on the other side.

Q. From that you would gather it was in the year 1954 when it was placed in the book?

A. Probably so.

Q. Or probably things immediately before were added in 1954? A. That is right.

Q. Will you refer to Exhibit 10, which I believe is also a Duo-Seal Rubber Teck data sheet; can you tell me whether or not that was the first data sheet that Rubber Teck distributed to the trade?

A. Well, I really couldn't answer that. I believe it is, but I know other sizes have been added on, I believe, [701] since this was put out. This could have been the first one, or the first one.

Q. Will you read the date that that Exhibit 10 bears? A. December 18, 1953.

Q. Would that be the date upon which it was prepared, approximately? A. I assume so.

Q. So as I understand it, it would be shortly after that date in December, 1953, that data sheets like Exhibit No. 10 had been handed out to the trade? A. That is Exhibit 10?

Q. Yes.

A. I don't believe anything like this was handed

(Testimony of Paul A. Karres.)

out to the trade. We had nothing printed up. This was more or less for our own use.

Q. Oh, I see, just for your own internal use?

A. Yes, I believe that is the answer on that one.

Q. Just so the record will show that the data sheet—oh, yes, Exhibit 77 is the data sheet bearing the number 1104-D and on the front page appears——

A. Let us not—we got to go back; (the witness turns pages of book). Here we are (indicating).

Q. Will you explain the differences between these two? That is the simplest way to do it.

A. Well, I better look this over. [702]

Q. That is, between 1104-D in Exhibit 9 and 1104-D that is Exhibit 77.

A. I believe the only difference is for advertising purposes.

Q. Will you turn over to the other side of 77. I think the essential difference is that there are more dimensions, isn't that correct? I believe more sizes is a more correct way to state it.

A. Yes, there are more sizes.

Mr. Fulwider: I would like to offer 77 into evidence.

The Court: It may be received.

The Clerk: Exhibit 77.

(The document referred to was here received in evidence as Plaintiffs' Exhibit No. 77.)

[See Book of Exhibits.]

Q. Are you familiar at all with the development of the Duo-Seal?

(Testimony of Paul A. Karres.)

A. Oh, in a small way, let's put it that way. Technically, no, but I have watched it from its inception. I believe, if you would like the date when I saw it, I can give you that, but I have watched it from the day of its inception.

Q. When was the first Duo-Seal made as it is today constructed, if you know?

A. Well, the way it is constructed today?

Q. Yes.

A. I couldn't answer that. Mr. Grass would probably answer that one.

Q. Did you ever show one of the Duo-Seals to the Franklin C. Wolfe Company before they came on the market?

A. Yes, sir.

Q. When was that?

A. The first ones were shown to them in the latter part of 1952 for evaluation, and we were going to let them handle it if it was satisfactory with them.

Q. That was late 1952?

A. Late 1952. We made the first ones and we showed them to them, and again Paul Smith said there is no use putting that on the market. We only wanted them to have it as being our sales representatives.

Q. Where was that conversation? [704]

A. That conversation, I believe, was at Rubber Teck.

Q. Was anyone else present besides you?

A. I believe Mr. Grass was present at that conversation.

(Testimony of Paul A. Karres.)

Q. And Paul Smith? A. Definitely.

Q. What sort of a Duo-Seal did you have? First, can you fix the date a little better for me? Late in 1952, you say?

A. Yes, I would have to say in the latter part of 1952.

Q. The last quarter, say?

A. I would say—well, some time in there.

Q. Around Christmas time? A. Before.

Q. What Duo-Seal did you show Mr. Smith?

A. I am afraid Mr. Grass will have to answer the question. I don't recall.

Q. You don't know how that Duo-Seal was made?

A. No, sir. That was not my particular interest in the business.

Q. Do you know what the configuration was, or we will say how the i.d. of the metal washer was shaped? A. No, I don't.

Q. Do you know whether or not it was made the same as [705] the Duo-Seal you are selling today?

A. You will have to ask Mr. Grass that one. I don't know. [706]

* * * * *

Q. When was the decision made by Rubber Teck to manufacture the Duo-Seal, or shall we say a one-piece seal?

A. Oh, sometime in the latter part of 1953.

Q. '53?

A. I couldn't give you any specific date on that.

Q. Had you at the time you made your decision

(Testimony of Paul A. Karres.)

to manufacture Duo-Seal, the one-piece Duo-Seal, decided how it was going to be constructed?

A. That wasn't up to me. Mr. Glass will have to answer that question.

Q. You don't remember? [707]

A. I don't remember that.

Q. Did you participate in any conversations with Mr. Glass or probably between Mr. Glass and Mr. Kerley in that period, while you were deciding to make the Duo-Seal, as to how it would be made, do you have any recollection of such conversation?

A. No recollection of how it was exactly to be made, no.

Q. When was the name "Duo-Seal" chosen by Rubber Teck as the name under which they would sell their one-piece seal?

A. That, again, I have no recollection of dates, excepting Mr. Glass told me he had gone around through the plant to his tool makers for a name for it, and five out of seven said "Duo-Seal", and that is where the name came from.

Q. (By Mr. Fulwider): Five out of seven? You don't remember when that was, though?

A. No, sir, I have no recollection of the date.

Q. Do you have any data or any written memorandum in your file that would tell when Duo-Seal was chosen as the trademark for your product?

A. No, but I should say sometime in '53. The specific date I couldn't answer.

Q. What part of 1953?

(Testimony of Paul A. Karres.)

The Court: He just got through telling you he couldn't say. [708]

Mr. Fulwider: He said sometime in 1953.

The Court: He just got through saying he could not tell you the exact date.

Mr. Fulwider: I am sorry. I didn't hear that. I didn't ask that before. You don't know what part of 1953 it was. All right. [709]

Q. Do you remember the names of these five people out of seven that picked the name Duo-Seal?

A. I could probably name a couple of them.

Q. Who were they?

A. Jerry Numbers in the tool room and Ginny Halland in the office.

Q. How do you spell that?

A. H-a-l-l-a-n-d, I believe is the correct spelling of it.

Q. Did you hear them say anything to Mr. Grass about choosing Duo-Seal?

A. No, sir. They told me later about it.

Q. Did you have a written contest or something among the employees? A. No, sir.

Q. Did you have anything to do with polling the employees as to choosing Duo-Seal?

A. No, sir.

Q. That was on Mr. Grass' part?

A. That is correct.

Q. Did Mr. Kerley have anything to do with that, to your knowledge?

A. Not to my knowledge.

(Testimony of Paul A. Karres.)

Q. What did you call your one-piece seal that you say you showed to Paul Smith?

A. One-piece seal. [710]

Q. Just called it one-piece seal?

A. That is correct.

Q. Did you explain to Mr. Smith how that one-piece seal was made? Before that, let me ask you, I assume from what you say you had not yet chosen the name Duo-Seal.

A. I believe that is correct.

Q. Did you explain to Mr. Smith how this one-piece seal was made that you say you showed him that day?

A. I am sorry. That is a technical matter and you will have to question Mr. Grass on that. I don't know.

Q. I am not asking you how it was made.

A. No. The answer is no.

Q. You did not explain it?

A. The answer is no.

Q. Did Mr. Grass explain to him?

A. I don't recall that.

Q. You and Mr. Grass were together in this conversation. A. That is correct.

Q. And it was at Rubber Teck as I understand it. A. That is correct.

Q. But you don't remember when it was?

A. No.

Q. Did you or Mr. Grass give to Mr. Smith any sketches at that alleged conversation to show how this one-piece seal [711] of Rubber Teck was con-

(Testimony of Paul A. Karres.)

structed? A. I don't believe so.

Q. What did you tell him yourself? Did you tell Mr. Smith anything about this one-piece seal?

A. All my conversation was very little. I just said, "Here is a one-piece seal and I think it is much better, for your evaluation," is the way I put it.

Q. Did you tell him anything else?

A. No, nothing else other than for evaluation purposes and whether he thought they would be able to sell those.

Q. Did Mr. Grass tell Mr. Smith anything in that conversation that you heard?

A. It is pretty hard for me to answer that one because I frequently walked away from them and went to the telephone and various things around the factory at the time.

Q. So you don't remember what Grass said?

A. No.

Q. What did Smith say?

A. Just shook his head. He says, "No good."

Q. Negatively, I take it?

A. "Not worth it."

Q. He said the seal wasn't worth what?

A. Well, his words, if I remember correctly, are to the effect that, "We have been advertising a two-piece Lock-O-Seal. [712] Why should we call ourselves liars now and advertise a one-piece Lock-O-Seal and sell it?"

Q. What did you say in response to that?

A. I just shook my head and walked off.

(Testimony of Paul A. Karres.)

Q. Did Mr. Smith say anything about whether or not he thought this particular one-piece sealing device that you handed to him would work?

A. Not to my knowledge.

Q. You don't recall?

A. I don't recall that.

Q. Did you tell Mr. Smith whether or not you had run any tests on that one-piece seal you handed to him?

A. No, sir, I did not. I assume so, because Mr. Grass had the one-piece in his hand, that he would run some kind of test.

Q. But you don't know your own self?

A. No, sir.

Q. Whether or not Grass had run any tests on it before this conversation? A. No, sir.

Q. Do you know whether Grass ran any tests on it after the conversation with Mr. Smith and before you merchandised a one-piece seal under the name Duo-Seal?

A. I believe he told me he had run some tests on them.

Q. But you have no personal knowledge? [713]

A. No personal knowledge whatsoever.

Q. You have no personal knowledge of any tests run by anybody else in that period?

A. Not at that particular period, no, sir.

Q. Did Rubber Teck have any molds for making this one-piece seal that Mr. Grass handed to Mr. Smith at this conversation?

(Testimony of Paul A. Karres.)

A. Just experimental, trial and error, trial and error, over and over again, on it.

Q. You had an experimental mold?

A. Made one up, yes.

Q. So it was a molded seal, you are sure of that?

A. I beg your pardon?

Q. It was a molded seal, you are sure of that?

A. No, I can't answer that. Mr. Grass can probably answer that question.

Q. You are not sure?

A. I am not too sure.

Q. After that conversation that you and Mr. Grass are supposed to have had with Mr. Smith, did you have any other conversation with Mr. Smith where you showed him or told him about your intention to manufacture a one-piece seal?

A. I don't believe our intention was to manufacture a one-piece seal unless they approved it.

Q. At this conversation you had with Paul Smith, you [714] merely showed it to him for evaluation?

A. That is correct.

Q. You didn't tell Mr. Smith that you had it in mind to manufacture it yourself if he didn't like it?

A. No, sir.

Q. Did you at any time after that tell Mr. Smith or anyone else in the Wolfe Company that you were going to manufacture a one-piece seal yourself?

A. Are you talking about after termination of our contract or before, prior?

Q. I am talking about any time between this conversation when you didn't tell him and the time

(Testimony of Paul A. Karres.)

you put it on the market and then they discovered it.

A. That is quite a broad statement, 1952 to approximately the latter part of 1953, isn't it?

Q. I am sorry. I understand your conversation with Mr. Smith was in 1953 and it came on the market in the fall.

A. No. I said before when I testified, in 1952, the first ones.

Q. Did you say 1952 this morning? You said 1953 this afternoon.

A. I beg your pardon. 1952 is when I was referring to.

Q. All right. Between whenever that conversation was, whether it was 1952 or 1953, did you at any time prior to putting [715] the Duo-Seal on the market tell anyone in the Wolfe Company that you were going to manufacture, to merchandise a one-piece seal?

A. At that time we had no intentions of putting it on the market.

Q. You must have had the intention when you put it on the market.

A. Our intention was, after our contract was terminated, which was February 1953.

Q. I see. The contract terminated when in 1953?

A. February 28, 1953.

Q. Which contract is that?

A. The termination agreement between Franklin C. Wolfe Company and Rubber Teck.

Q. February 1953. You mean the exclusive sales

(Testimony of Paul A. Karres.)

agreement? A. That is correct.

Q. Had the manufacturing agreement been terminated, also?

A. I don't know of any manufacturing agreement.

Q. You remember this agreement that was made out in the name of Kerley under which Rubber Teck operated. A. Yes, I remember that.

Q. And had that agreement terminated?

A. I wouldn't have the slightest knowledge whether it [716] was terminated or not.

Q. I believe that was 17, wasn't it? Did that run for a term of years? Yes, it did. You recall paragraph 1, that the agreement is for five years from 29 November 1948.

Now, had you made up your mind to manufacture Duo-Seals prior to November 29, 1953, the termination of that agreement?

A. Well, the contract speaks for itself. I am assuming yes. I would have to say yes. [717]

Q. (By Mr. Fulwider): You had decided?

A. I hadn't decided this. I didn't even have one of those.

Mr. Fulwider: Oh.

The Witness: This is to Mr. Kerley, not to Rubber Teck.

Q. (By Mr. Fulwider): You mean to tell me you didn't know about this Exhibit 17?

A. I knew it was one of those. Whether it had been signed or not, I didn't know. That I do know, that there was one in existence, yes.

(Testimony of Paul A. Karres.)

Q. When did you find that out? I imagine about the date it bears, November, 1948?

A. Possibly; I don't have any specific knowledge on that. I don't know if this was addressed to Mr. Kerley at Rubber Teck or whether it went personally to his home. I think it went personally to his home.

Q. Well, the statement of your counsel, and your statement, as I understand it, is that Rubber Teck operate under that agreement, even though it was made out in the name of Mr. Kerley, and even though now you don't know if it was duly signed?

A. Very true. I know we have been operating under this contract.

Q. And you were aware of that, were you not?

A. I was aware that there was such a contract.

Q. Yes, and you knew that Rubber Teck was operating under at least an oral agreement like Exhibit 17?

A. I will have to say yes to that.

Q. And you never got the point in the game before the five years ran out?

Mr. Miller: I am going to object to it as argumentative.

The Court: Sustained.

Q. (By Mr. Fulwider): Now, to refresh, your recollection a little bit, let us look at Exhibit 21 here, which is a contract headed "Agreement" of Franklin Wolfe Company, Inc. and Rubber Teck, Inc., and it is dated August 15, 1949, and was to run for seven years. Will you look at that a

(Testimony of Paul A. Karres.)

moment. And then I will call your attention to a paragraph.

A. Yes. I know this I signed myself.

Q. Now, will you turn to the last page of Exhibit 21 and read it?

A. Do you want me to read it?

Q. Well, coming down from the top, it is the fourth paragraph starting, "It is mutually understood," will you read that out loud?

A. Would you like to have me read it?

Q. Yes.

A. "It is mutually understood and agreed that this agreement in no way encompasses the sale or manufacture of the product Lock-O-Seal which subject [719] is covered by a separate agreement dated 29 November, 1948."

Q. Now, that agreement referred to therein is this Exhibit 17 which you are just looking at, isn't it? A. It definitely does.

Q. Yes.

Now, I am not sure whether you have answered the question. I may be wrong. Let me ask this.

Other than the one incident that you mentioned here of showing Mr. Smith a one-piece seal for evaluation, did you ever show to Mr. Smith or anyone else in the Wolfe Company, prior to January 1, 1954, the Duo-Seal or a one-piece seal that you were offering to the trade?

A. I had no reason to.

The Court: Well, you can answer that yes or no. A. No. [720]

(Testimony of Paul A. Karres.)

Q. (By Mr. Fulwider): Prior to the time you offered the Duo-Seal to the trade, did you ever show a one-piece fastener seal to Mr. Gross?

A. Yes, sir.

Q. Did you do that personally?

A. Mr. Kerley and myself.

Q. Yes, and when was that?

A. That was in the last part of '48. If I may elaborate on that answer and explain it, may I, your Honor?

Mr. Fulwider: Yes.

A. This was brought to our attention by Douglas Aircraft. They had a sealing problem. They brought a one-piece seal in—rather, they brought the washer in and told us to vulcanize or mold rubber to this one-piece seal.

Q. That was Douglas?

A. That was an engineer of Douglas Aircraft and as I recall his name, it was Mr. Woods. They were having problems. They wouldn't use a Lock-O-Seal. They refused to [721] use them at that time. Why, I don't know.

Q. Was this in 1948?

A. In 1948, shortly after I was with the company.

Q. What did you do?

A. We immediately made up one and took it down to Mr. Gross and that is the conversation when I first met Mr. Gross, and he said, "It absolutely will not work.", and to forget about it.

(Testimony of Paul A. Karres.)

Q. How was this one-piece seal made you delivered to Mr. Gross?

A. Well, it was a little bit different. It was just recessed at the washer and then we made a shank, this experimental mold with an insert in the center of it, and then the rubber was forced into it and bonded securely to the washer.

Q. Did you explain that construction to Mr. Gross?

A. He seen it; we took it down to him.

Q. Yes, but he couldn't tell what was inside, the rubber, unless you cut it. Did you cut it open?

A. No, sir.

Q. Did you give him a sketch as to how it was made?

A. No, sir.

Q. Did you explain to him how it was made?

A. Yes, sir.

Q. Did you explain it to him exactly as you have [722] explained it to me here?

A. Yes, sir; that is the only way I know it.

Q. How did you do that, personally?

A. Mr. Kerley and myself both were there.

Q. Who made the explanation?

A. We both talked; he would talk and if he forgot to mention something, I would mention it.

Q. Did you know personally that it was so constructed as you have just told me?

A. Yes, sir.

Q. And Mr. Gross said it would not work?

A. That is correct.

Q. Did he tell you why?

A. No, sir.

(Testimony of Paul A. Karres.)

Q. Did you ask him?

A. He was supposedly a technical man; I couldn't question his judgment.

Q. Now, at any later time, did you explain to Mr. Gross in 1948 that you had in mind to manufacture that yourself? A. No, sir.

Q. Now, after that, did you ever show Mr. Gross a one-piece seal, prior to, we will say, January 1, 1954?

A. No, never showed him any. We have talked about it at various times down there. [723]

Q. You have never told Mr. Gross prior to January, 1954, that Rubber Teck planned to come out with a one-piece seal on its own account?

A. No, sir.

Q. Who manufactured the metal washers for the Duo-Seal?

A. We manufactured them ourselves.

Q. When did you start doing that?

A. Mr. Grass will have to answer that; I don't know.

Q. You don't know when?

A. Not the dates, no.

Q. Who manufactured them before you started making them yourself?

A. Pacific Cut Washer.

Q. Pacific Cut Washer was manufacturing and manufactured for you all the metal washers on the first Duo-Seals that you put on the market, didn't they?

A. Possibly so; I don't know offhand. [724]

* * * * *

OTTO GRASS

called as a witness by the plaintiffs under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Lee): Mr. Grass, are you an officer of Rubber Teck, Inc.? A. I am.

Q. What office do you hold?

A. Vice president. [727]

Q. Are you also a stockholder? A. I am.

Q. Approximately what percentage of the stock do you hold? A. About 32 per cent.

Q. Is that your entire holdings or do you also own part of this pledged stock?

A. I own part of the pledged stock.

Q. How long have you been an officer of Rubber Teck? A. Since August, 1949.

Q. Have you been a stockholder the same length of time? A. Yes, sir. [728]

* * * * *

Q. Are you in charge of all production of Rubber Teck now? A. Yes.

Q. Does Rubber Teck make Duo-Seals at the present time? A. Yes. [731]

Q. Are all the Duo-Seals that are made now made the same way?

A. The same way as what?

Q. All the ones that are made at the present time, are they made in the same manner?

A. Yes.

(Testimony of Otto Grass.)

Q. Since you started selling Duo-Seals, have they always been made in the same way?

A. Yes.

Q. Were you personally the originator or designer of Duo-Seals? A. Yes, I would say so.

* * * * *

Q. (By Mr. Lee): Does Mr. Aldridge work under your direction? A. He does.

Q. What are his duties?

A. Chief engineer.

Q. And he is responsible to you? A. Yes.

Q. Are you responsible for the dimensions of Duo-Seals? A. I am.

Q. Referring first to Exhibit 10, this is a data sheet, it bears a No. 1102-D, and are those dimensions of [732] Duo-Seals put out by you?

A. They are dimensions for a data sheet, not for the manufacture.

Q. But they are dimensions put out by you in the trade? A. That's right.

Q. And you are responsible for those dimensions? A. Yes.

Q. Referring to 1104-D, is this a further data sheet put out by Rubber Teck on Duo-Seals?

A. Yes.

Q. This is the one contained in Exhibit 9?

A. Yes.

Q. You are responsible for those dimensions?

A. Well, not——

Mr. Miller: What do you mean by responsible for them?

(Testimony of Otto Grass.)

The Witness: Not responsible for this. I didn't draw it.

Mr. Lee: I said the dimensions.

Mr. Miller: But I want to know what you mean by responsible.

Mr. Lee: Somebody at Rubber Teck has to be responsible for them.

Mr. Miller: I don't know about that. What do you mean by responsible? Did he prepare them, or what? [733]

The Court: Did he determine the dimensions? That is the problem here, whether he did the actual computation as to the dimensions and sizes and so forth.

Mr. Miller: Is that the question?

The Court: I assume that is the question.

Mr. Miller: That is what I want to get straightened out here.

Q. (By Mr. Lee): Did you determine the dimensions?

A. What do you mean by determine?

Q. How did you get them?

A. Our engineer drew them up.

Q. Your engineer drew them up? A. Yes.

Q. Mr. Aldridge determined those dimensions?

A. Mr. Aldridge, yes.

Q. Where did he get them from? Did he compute them? A. I don't know.

Q. You don't know where he got them?

A. No.

Q. Is he responsible to you? Did he talk them

(Testimony of Otto Grass.)

over with you? A. Yes, I imagine.

Q. Weren't you personally the developer of the Duo-Seals? A. Yes. [734]

Q. Well, he would get the dimensions from you then, wouldn't he?

A. A lot of these dimensions we got from customers. They asked for a certain size, and then we put it on our data sheet. They specified the size of washer, the size of bolt they wanted.

Q. These are dimensions of Duo-Seals, aren't they? A. Yes, they are.

Q. Let's get it straight. The customers supplied you with the dimensions and you made them that way, is that the way it goes?

The Court: That is not the answer. He said sometimes the customers did. He didn't say always. Sometimes the customers required certain sizes.

Q. (By Mr. Lee): When did they?

A. They do today. Every few days we get in special sizes we have to make. They have a specific sealing problem that they can use only one size, not the size we manufacture, and then we make up a special Duo-Seal for them.

Q. Are these all special Duo-Seals here?

A. Some of them are special.

Q. Which ones are special?

A. I don't know offhand. I would have to check it over.

Q. Would you check it over and tell me if there are [735] any special ones there?

(Testimony of Otto Grass.)

Mr. Miller: I don't see the materiality of this, your Honor.

The Court: Sustained.

Mr. Miller: I object to it.

The Witness: I wouldn't know which ones were special——

The Court: Just a minute. I sustained the objection.

The Witness: Okay.

Q. (By Mr. Lee): How about the dimensions showing on the back of Exhibit 77? Who determined those dimensions?

Mr. Miller: I don't think this is material here.

Mr. Lee: I think it is very material.

The Court: Overruled.

The Witness: Our engineer, George Aldridge.

Q. (By Mr. Lee): Mr. Aldridge worked up those dimensions on the back of Exhibit 77?

A. Yes.

Q. Under your direction?

A. No. He worked them up by himself, but I saw them after he had prepared them.

Q. And you approved of them? A. Yes.

Mr. Lee: I would like you to turn to page 104 of [736] your deposition, commencing line 2.

“Q. Are you responsible for working out the dimensions on these shown in Plaintiffs' Exhibit 10?

“A. Part of them, the rubber part, yes, but not the washer.”

Did you so testify? A. Yes, I did.

(Testimony of Otto Grass.)

Q. Did you do the computations on the rubber part?

A. There was no computation. It was trial and error.

Q. But you personally worked them out?

A. Yes.

Q. Does Rubber Teck manufacture O rings for commercial and military sale? A. Yes, we do.

Q. Are you in charge of the production of these? A. Yes.

Q. Are there standards for military O rings?

A. I don't know. I assume, yes.

Q. Have you ever seen any? A. No.

Q. You have never seen any?

A. I never have seen any what?

Q. Standards for military O rings.

A. Standard in what? Dimensions or what?

Q. Dimensions. A. Yes.

Q. Tolerances.

A. Yes, I have seen standards in dimensions and tolerances.

Q. During the fall of 1949 when you first came there, did Rubber Teck manufacture both the metal and rubber parts for Lock-O-Seals? A. Yes.

Q. Were the dimensions for the metal washers or retainers for Lock-O-Seals established when you came there?

A. That I couldn't answer. We had washers, that's all.

Q. They were established then?

(Testimony of Otto Grass.)

A. I don't know whether they were established, any size.

Q. You had washers. They were certain sizes, weren't they?

A. But whether the sizes were established, I don't know. We just had washers. I don't know what the sizes were or whether they were established. We made rubber to fit the metal washers we had then.

Q. In other words, there were metal washers there of different sizes when you came there?

A. Yes. [738]

Q. Were there any changes in the dimensions of these metal washers for Lock-O-Seals while you were manufacturing them?

A. Not that I know of.

Q. Did the Pacific Cut Washer Company subsequently take over the manufacture of these metal washers? A. Yes.

Q. Do you know approximately when that was?

A. I wouldn't know.

Q. You know that did happen?

A. I know that it did happen. We shipped the dies to them, but the date, I don't know.

Q. Did you test the rubber parts for Lock-O-Seals while you were manufacturing them?

A. Yes.

Q. Were they the right size?

A. We tested to find out if they were the right size.

Q. And were they the right size?

(Testimony of Otto Grass.)

A. While we were making them?

Q. Yes.

A. We assumed they were the right size.

Q. You tested them, didn't you?

A. We tested them in a piece of plexiglass like we showed here this morning, to see if the rubber was large enough to fill the void, but not extruded. By that we [739] determined our mold.

Q. As a result of these tests, they were made the right size, were they not? A. I think so.

Q. Did you test them under pressure?

A. No. [740]

Q. Have you tested Duo-Seals? A. Yes.

Q. Were they the right size? A. Yes.

Q. Did you get the washers for Duo-Seals from Pacific Washer Company?

A. We made them ourselves.

Q. When did you first start manufacturing them?

Mr. Miller: I don't see the materiality of this line of examination. I object to it on that ground.

The Court: I don't know whether it is material or not. Objection overruled.

A. I don't know when. I will have to check on the first date we made a die for making them, for making the washer.

Q. (By Mr. Lee): When you first manufactured Duo-Seals, did you get the washers from Pacific Washer Company? Didn't you?

A. Yes.

Q. And for some time thereafter?

(Testimony of Otto Grass.)

A. Well, for a small length of time, yes.

Q. And you bought all of them from Pacific Washer Company?

A. We bought a number of sizes.

Q. All the ones you used? [741] A. Yes.

Q. Are washers for Duo-Seals exactly the same size as washers for Lock-O-Seals?

A. No, sir.

Q. They are not? A. No, sir.

Q. Were they for the Lock-O-Seals you manufactured?

A. Not exactly the same size. Possibly within a few thousandths.

Q. I would like you to compare a few sizes from Exhibit 77 here, compare them with Exhibit No. 1. Would you read what the T or thickness of the washer is for half inch sizes?

A. 50/1000.

Q. 50/1000 in Exhibit 1? A. Yes.

Q. For half inch size is 50/1000?

A. Yes, yes, plus or minus 4.

Q. And that is plus or minus 4?

A. Yes.

Q. What is the I.D. shown on that, the actual I.D.? A. The actual I.D.?

Q. No. That would be the rubber, would it not?

A. No. The actual I.D. there would be the first higher diameter, I imagine, which would be [742] 750/1000.

Q. And on Exhibit 1, that is the same?

(Testimony of Otto Grass.)

A. 750/1000.

Q. Are any of those half inch sizes you are looking at?

A. They are not identical because you have plus or minus 4.

Q. This is plus or minus 4, is it not?

A. Yes, but we don't get the 54/1000 or 46/1000.

Q. Within your limitation of the tolerances expected, they are identical?

A. They are identical, yes.

Q. Is that true of most of the sizes on here?

A. I would have to look at them.

Yes, it is.

Q. On practically all of them, isn't it?

A. I imagine. Most of them are.

Q. Now, the tolerance for the thickness of the washer on Exhibit 77, that is your exhibit there——

A. Yes.

Q. ——is given, and what is it given as?

A. Plus or minus 4.

Q. Is that correct?

A. Is it correct for——

Q. For what the product is? [743]

A. Yes.

Q. So as I understand, the washer will be .050 for that size we are talking about, plus or minus 4/1000, is that right?

A. Yes, because that is the size of material you can buy, standard.

Q. Now, if this washer was thicker than .050, do you reduce it in making a Duo-Seal?

(Testimony of Otto Grass.)

A. Do we reduce the washer?

Q. The thickness.

A. The thickness of the material? No, we don't.

Q. Does the rubber mold accommodate itself to the thickness of the washer? A. Yes, it does.

Q. How does it do this? Does it have some sort of floating feature?

A. That is a secret.

Q. That is a secret?

A. It does accommodate itself to as much as 10/1000 variation in thickness.

Q. It floats up and down, let me say?

A. Yes.

Q. Do I understand, Mr. Grass, you were responsible for the selection of the name, "Duo-Seal"?

A. No, I wasn't. Some of our employees were.

Q. How was it selected?

A. I asked a number of people in the plant as to the name, what they would call this one-piece seal, and the majority came up with the name Duo-Seal, so I figured if the majority in the plant would come up with it, it would be a good name for the public.

Q. Did you show them "Lock-O-Seal" or anything like that?

A. I showed them the one-piece seal, yes.

Q. Were they familiar with the Wolfe Company name?

A. Some of them. Some of them never heard of the Wolfe Company.

(Testimony of Otto Grass.)

Q. Some of them never heard of the Wolfe Company? A. Never heard of them.

Q. As I understand it, you went to each one of them and asked them what they thought out for it and each one of them came up with the name "Duo-Seal"?

A. Not each one. The majority, I said.

Q. How many was the majority?

A. I don't know offhand; I would say approximately five out of seven, somewhere on that order, but I testified here before in my deposition to that amount. I don't remember the exact number.

Q. But it is correct that each one of those persons was just shown this piece and he sprung up with the name [745] "Duo-Seal"?

A. Not each one. The majority.

Q. Five out of seven? A. Yes.

Q. Are the dimensions you publish for the Duo-Seal Rubber Ring the same dimensions as you worked with in making rubber rings for Lock-O-Seal?

A. The dimensions we published for—I would have to hear that again.

Mr. Lee: Will you read the question?

(Pending question read.)

A. I assume they are.

Q. (By Mr. Lee): They are? A. Yes.

Q. For all sizes?

A. That I would have to check, but I assume they are.

Q. Well, as I understand it, you worked at

(Testimony of Otto Grass.)

these dimensions for the rubber rings yourself, did you not? A. Yes, I did.

Q. And they all happened to just come up the same as the Lock-O-Seal dimensions?

A. On Duo-Seals?

Q. Yes.

A. I can't use those dimensions on Duo-Seals. We don't need the I.D. of the ring, we don't need the thickness [746] of the ring.

Q. But you publish them, don't you?

A. We publish them as a data sheet, yes.

Q. As I understand it, these dimensions you worked out came out the same as the ones you previously had been working on?

A. The dimensions I worked out——

Q. You worked out the dimensions for the rubber parts on Duo-Seals, did you not?

A. Yes.

Q. Are the figures you publish accurate?

A. They are.

Q. They are the same as the rubber rings on the Lock-O-Seals?

A. They are the same on the I.D. but not on the washer or the O.D. of the rubber ring.

Q. They are not the same on the washer?

A. No. As our washer varies in thickness, our rubber varies in thickness.

Q. Now, for this half inch size, what is the W dimension?

A. The W dimension here would be 70/1000.

Q. And for this half inch size here it is 70/1000?

(Testimony of Otto Grass.)

A. 70/1000.

Q. Isn't that right? [747] A. Yes.

Q. Isn't that true throughout these——

A. Let me explain it. We have a 55 or 56/1000 washer. Our rubber is not 70/1000, but it is 76/1000 cross section.

Q. But if you have a 56/1000 cross section, it is 70/1000?

A. It is 70/1000, it would be somewhere near that. It wouldn't be exact, because you can't determine that size exactly.

Q. But if a washer is 50/1000, then it should work out to 70/1000?

A. It should come close to 70/1000.

Q. And that is true throughout, isn't it?

A. Yes, providing the washer is 50/1000. [748]

* * * * *

The Court: Bring in the plaintiffs' seal and the defendants' seal.

Mr. Fulwider: Could I say something, your Honor?

The Court: Yes.

Mr. Fulwider: This is a drawing prepared by Mr. Miller illustrating in one view the Lock-O-Seal and in another view the Duo-Seal. I believe what Mr. Lee is asking this witness to do is to mark in right there on the Lock-O-Seal drawing the difference between, or what would have to be done to that to make it into a Duo-Seal, and I think that is proper to illustrate the testimony. It is merely illustrative of the question as an aid to the court

(Testimony of Otto Grass.)

and possibly to counsel in visualizing these equivalencies. [751]

The Court: What is the difference between the two seals?

The Witness: Are you asking me?

The Court: Yes, I am asking you. I don't care anything about referring to that exhibit, but what is the difference between the two seals.

The Witness: One is bonded, has a flat portion on the washer side. The other has an O ring in a washer.

The Court: That is the only difference?

The Witness: That is the only difference that I can see. [752]

* * * * *

Mr. Lee: The shape of the thing is somewhat important, [753] your Honor.

The Court: You have got the defendants' seal in court. I can look at the shape. I know what the shape is. I get more from looking at the shape than this witness could tell me. Maybe you don't want me to look at it.

Q. (By Mr. Lee): Mr. Grass, does the Duo-Seal rubber ring function any differently than an O ring in a seal?

A. I don't know whether it functions differently or not. They both achieve the same purpose.

Q. They work the same way?

A. I don't know whether they work the same way. They achieve the same purpose.

(Testimony of Otto Grass.)

Q. If they don't work the same way, how do they differ?

The Court: He says he doesn't know.

The Witness: I don't know.

The Court: He says he doesn't know, but they work the same way.

Q. (By Mr. Lee): In other words, you don't know how it works?

A. No. I just know they both achieve the same purpose in sealing.

Q. You don't know of any differences in the way they work?

A. Not the way they work. There is a difference in the way they are constructed. [754]

Q. But you don't know of any differences in the way they work? A. No.

Q. You told us earlier that you are familiar with commercial and military O rings, is that correct? A. The size, yes.

Q. And the shape of them? A. Yes.

Q. Is it not true that no O ring is perfectly circular in cross-section?

Mr. Miller: May I have the question?

The Court: Read the question.

(Question read.)

Mr. Miller: No O ring?

The Court: Well, I suppose if you get down to the extremes that there are variances in O rings in the circular and cross-section, just like there is a variance in the cross-section of a doughnut. I suppose nothing is perfect.

(Testimony of Otto Grass.)

Mr. Lee: Did the witness answer the question, your Honor?

The Court: I don't know whether he did or not. Did you answer it?

The Witness: No, your Honor.

Q. (By Mr. Lee): Will you?

A. There is no perfect ring of any kind. [755]

Mr. Lee: May I see Defendants' Exhibit U?

Q. Referring to Defendants' Exhibit U for identification, this is a sheet entitled U. S. Air Force Standard. It shows an O ring, is that correct? A. Yes.

Q. And these standard O rings have a small projection on the outside of them? A. Yes.

Q. Do you have any engineering drawings on Duo-Seals at Rubber Teck?

A. Only data sheets.

Q. No drawings? A. No drawings.

Q. Do you have any drawings of molds for making Duo-Seals?

A. No, have no drawings.

Q. Do you have any sketches?

A. We made pencil sketches for the tool room.

Q. Are these sketches dated? A. No.

Q. What do these sketches show?

A. Show the toolmaker how to make the tooling.

Q. What do they show on them?

Mr. Miller: Now, your Honor, we are going into the trade secret angle of this thing on the mold and I think your [756] Honor has already passed on that in the motion here to produce in this case.

(Testimony of Otto Grass.)

The Court: What difference does it make? We are not interested in the molds.

Mr. Lee: I think we will be, your Honor.

The Court: Why? You don't have to claim any patent as far as the mold is concerned.

Mr. Lee: This goes to the unfair competition side of the case, your Honor.

The Court: In what way? If they took molds from the plaintiff and used those molds, it might be unfair competition, but that is not the evidence. They built their own molds. Objection sustained.

Mr. Lee: Your Honor, may I ask that the witness bring these sketches with him to court so that if we are able to establish the materiality we will have them here?

Mr. Miller: I am going to object to that.

The Court: No, I don't think I will make the order. If they are material, I may make the order. I don't know whether they are material. There is nothing in this case so far about taking the molds that belonged to the plaintiff. The fact of the matter is, I think the testimony is that those molds were sold and disposed of.

Mr. Lee: Molds for a two-piece Lock-O-Seal, your Honor. [757]

The Court: That is the only thing you want, isn't it, the two-piece Lock-O-Seal? You don't own any molds for a one-piece seal.

Mr. Lee: Yes, your Honor, we do. We manufactured millions of them.

Mr. Miller: There is no evidence in here that

(Testimony of Otto Grass.)

we ever had the molds for the Stat-O-Seal. We were merely asked to make a bid.

The Court: I will sustain the objection, Mr. Miller. I won't make the order that they be brought in to court until I am certain they are going to be material in this case. At the present time, I am not sure.

* * * * *

Q. (By Mr. Lee): Do you recall making a sketch of the Duo-Seal in your deposition, Mr. Grass?

A. Yes, I made two of them, I think.

Q. Is Plaintiffs' Exhibit 16 for identification the sketch you made?

A. It looks like the same.

Q. In Exhibit 16, the shape of the metal retainer is different than it is in the present Duo-Seal, is that correct? [758] A. Yes, it is.

Q. Did the form shown in Exhibit 16 precede the present Duo-Seals? A. It did.

Q. And you went from the form shown in Exhibit 16 to the present form?

A. No. I think we tried one other method with notches in it.

Q. You tried one with notches in it?

A. Yes.

Q. After that?

A. Either after this or before, I don't know which.

Q. You don't know whether it was before or after? A. No.

(Testimony of Otto Grass.)

Q. Were the first models made shortly after you got the idea of making these things that way?

A. I didn't hear you.

Q. Were the first models made shortly after you got the idea of making them that way?

A. No, we made models before we got the idea of making them this way.

Q. You made models before you got the idea of making them that way? A. Yes. [759]

The Court: Let me see that.

(Witness handing exhibit to the court.) [760]

Mr. Lee: I would like to offer Exhibit 16 into evidence at this time.

The Court: It may be received.

The Clerk: Exhibit 16.

(Said exhibit was received as Plaintiffs' Exhibit 16.)

The Court: Now, I understand that before you established the model that you are now using, you experimented in several different ways in which to attach the O ring to the metal ring, the metallic washer?

A. Yes, in order to get more surface for bonding.

The Court: And Exhibit 16, is that one of your first experiments?

A. No. I don't know which one it was. We have a number of them. I don't know which one that was, first or second or last. The last one was that, we make it now.

The Court: With the flat surface.

(Testimony of Otto Grass.)

A. With the flat surface.

Q. (By Mr. Lee): Do you have any records that would show when you made these various models? A. No. I kept no records on it.

Q. This letter, Exhibit 11, is dated November 20, 1953. I believe Mr. Karres testified that that was about the same time you first offered Duo-Seals to the public. Do you agree with that? [761]

Mr. Miller: May I have the question, please?

(Pending question read.)

A. I wouldn't know when the first sales—our Engineering offered them for sale.

The Court: Let me see that.

Q. (By Mr. Lee): Were the models that you made up of Exhibit 16 made shortly before you sent this letter to Fletcher, two or three weeks?

A. That I don't know. I never seen this letter in our office. I had no reason to see it.

I manufactured and made the parts. I didn't sell them. I took care of no office work.

Q. When would you place the time that you made the first models?

A. The first models were sometime in '52.

Q. Sometime in '52? A. Yes.

Q. The beginning or the end of '52?

A. Possibly the beginning.

Q. Possibly the beginning? A. Yes.

Q. And how do you establish that it was the beginning?

A. I can't establish it. I just assume that it was at the beginning. [762]

(Testimony of Otto Grass.)

The Court: When you say models you mean the experimental models?

A. The experimental models.

The Court: The experimental models?

A. That is right.

Q. (By Mr. Lee): Did you personally make the first models? A. Yes, I did.

Q. Did anybody else work on them with you?

A. Some of my tool makers made some of the models.

Q. Who were those tool makers, who would they be?

A. Well offhand it was Roy Hilts, was one of the tool makers, and George Danchuck.

Q. George Danchuck? A. George Danchuck.

Q. And anyone else work on them?

A. No, sir.

Q. Have you talked to them about this?

A. Yes.

Q. When do they say it happened?

Mr. Miller: That is the same question.

The Court: Sustained. Sustained.

The Witness: I haven't talked to them recently.

Q. (By Mr. Lee): You haven't talked to them recently? A. No, sir. [763]

Q. Do you have anything to refresh your memory as to when this happened?

A. No, sir, I couldn't.

Q. Who saw these first models, besides yourself?

A. Mr. Kerley, Mr. Karres and some of the people in the office.

(Testimony of Otto Grass.)

Q. Who in the office?

A. I can't give you the names of all of them; I don't know all their names. There was Virginia Holliday, was one, and Bettie, I don't know her last name, even. I am not familiar with them.

Q. Are they there now in the office?

A. One of them is, yes.

Q. Which one of them is it?

A. Bettie.

Q. Other than the people you have just enumerated, did anybody else see these first models?

A. I imagine. I couldn't say definitely.

Q. Who would you imagine saw them?

A. Possibly somebody that ran the mold.

Q. Who would that be?

A. That I wouldn't know.

The Court: Well, you are asking for speculation. He says he doesn't know.

Q. (By Mr. Lee): Do you have any other corroboration [764] to establish when you made these models, of any kind? A. No. I have none.

Q. Did you ever receive a request for a bid from the Wolfe Company to make models for their rubber Lock-O-Seals?

A. Not personally. I heard there was such a request.

Q. You heard there was such a request?

A. But I never made a bid on them.

Q. You did not make a bid on them?

A. No, sir.

Q. But you know there was such a request?

(Testimony of Otto Grass.)

A. I heard.

The Court: He said he heard there was a request; he didn't say he knew. He heard there was a request.

Q. (By Mr. Lee): Will you turn to page 97 of your deposition, Mr. Grass, commencing on line 7:

"Q. Did you ever have any other subsequent conversations with him?

"A. No, but I had a request to make a mold for them on their one-piece. They had a request in for us to quote on making a mold for their one-piece."

Is that the way you testified? A. Yes.

Q. So that at the date of your deposition you did remember it? [765]

The Court: Now, don't argue with the witness. You got it in the record. If there is a discrepancy there, you have got it in the record.

Q. (By Mr. Lee): You never saw the bid or the request? A. No, sir.

Q. Did you ever talk to Mr. Kerley about it?

A. Yes.

Q. "Yes"? A. Yes.

Q. Do you recall what was said?

A. Merely that they requested us to bid on designing a mold to make their part, Duo-Seal, or I mean their Stat-O-Seal.

Q. He wanted you to bid on making the mold?

A. They wanted us to design a mold to make their Stat-O-Seal.

(Testimony of Otto Grass.)

Q. You were the tool maker, weren't you, or in charge of tool making?

A. I was in charge of tool making.

Q. Why didn't you bid on that?

Mr. Miller: I object to that.

A. For various reasons.

The Court: Just a minute here. Is there objection?

Mr. Miller: Yes.

The Court: Sustain it. [766]

Q. (By Mr. Lee): As I understand it, there was a request in for a bid, was there not?

A. Yes.

Q. And you were in charge of the tool making, weren't you? A. Right.

Mr. Miller: Objected to. That has been asked and answered. It is getting repetition in here.

The Court: Well, he has already answered. Go ahead.

Q. (By Mr. Lee): And Mr. Kerley turned over this request to you? A. No, sir.

Q. He just simply said, "They request us to make a small mold", and that was the end of the matter? A. That was the end.

Q. Nothing else happened?

A. That is all.

Q. Were you on good terms with the Wolfe Company at this time?

A. I assume we were. I don't know on how good terms we ever were with them. I never had much dealing with them.

(Testimony of Otto Grass.)

Q. Do you recall a conversation that Mr. Kerley testified to yesterday concerning making a bid on a one-piece Lock-O-Seal or Stat-O-Seal with Mr. Smith and you? A. Yes. [767]

Q. Do you remember that conversation?

A. No. I don't ever remember anybody asking me to bid on designing a mold, except Joe Kerley.

Q. So you don't recall this conversation that Mr. Kerley testified to yesterday?

A. No, I don't.

Q. Did you see the Wolfe Company drawings of the one-piece Lock-O-Seal at about the time of that bid? A. No.

Q. Did you see any samples of their parts?

A. No, sir.

Q. Did you see any drawing of theirs on molds?

A. No.

Q. Any data sheets? A. No, sir.

Q. Do you recall this request for making a mold, that it was to be a single cavity mold or a multiple cavity mold?

A. It was to be a production mold.

Q. In other words, multiple cavity?

A. Multiple cavity.

Q. Do you recall whether it was for one or for several sizes?

A. That I do not know. We were merely to design a mold, to mold—to make a one-piece seal from. [768]

Q. Did you and Mr. Kerley have any conversa-

(Testimony of Otto Grass.)

tions about whether or not to make a bid on this request?

A. No. It was left entirely up to me.

Q. Did you ever tell anybody at the Wolfe Company that you were not going to bid on it?

A. No, because I never saw a written request for it; it was just I heard there was a request. I don't believe that they ever had a written request in. [769]

Q. Did Mr. Kerley suggest to you that you work up some figures on this bid on this mold?

A. I don't remember.

Q. You don't remember? A. No.

Q. Do you recall ever giving any figures on it?

A. I couldn't have because I would first have to design the mold in order to give any estimate.

Q. Did you ever show a sample of a Duo-Seal to anyone at the Wolfe Company?

A. Yes, to Paul Smith.

Q. When was that?

A. Over on Higuera Street in Culver City.

Q. When was it?

A. That I can't pin down to any certain date.

Q. Who was present? A. Paul Smith.

Q. And yourself? A. And myself.

Q. Anyone else? A. No.

Q. Mr. Karres wasn't there? A. No.

Q. What was said at that conversation?

A. I went over to see about if we could produce as [770] many of these Lock-O-Seals as they had orders for. They thought we weren't able to pro-

(Testimony of Otto Grass.)

duce them, so I went over to tell them we could make 300 cavity molds instead of 200 on our regular Lock-O-Seal.

At the same time I showed him this one-piece, and his exact words were, "Why make liars out of us? We are advertising a two-piece superior to a one."

Q. What was that one-piece you showed him made like?

A. Made similar to the one we are making today.

Q. Could you draw a sketch of it on the board? Is it exactly the same?

A. Similar to this one here.

Q. What is the difference about it, if anything?

A. I don't say it is exact. Nothing is exact. It is as near as we could make it the same.

Q. Was it made in the same way you make your present Duo-Seals?

A. As near as I remember, as near as is possible to make it the same, yes.

Q. Was the rubber molded into place?

A. It was molded into place.

Q. After it was made?

A. No, molded in while the part was in the mold, bonded in.

Q. In other words, it was not glued in? [771]

A. No.

Q. Did you tell Mr. Smith about how it was constructed?

A. No, merely showed it to him.

(Testimony of Otto Grass.)

Q. You just handed him one of these seals and said what?

A. "There is a one-piece seal."

Q. You didn't tell him anything about how it was made?

A. No. He could see for himself how it was made.

Q. Did you show him any sketches or a drawing of it? A. No.

Q. Coming back to your deposition, on page 97, I understand from the reporter that you made a change in the answer given there at line 9, is that correct? A. Yes, I did.

Q. You changed the word "bid" to the word "a request," is that correct? A. That's right.

Q. In other words, you think the reporter transcribed what you said incorrectly?

A. I don't know. [772]

* * * * *

Cross Examination

Q. (By Mr. Miller): While you were making Lock-O-Seals for Franklin C. Wolfe Company, were there any changes in the dimensions of the O rings that were made for the Lock-O-Seals?

A. Yes.

Q. Who made the changes? A. I did.

Q. Did you make these changes as the result of a test? A. As a result of tests, yes.

Q. On blocks similar to the blocks we had here this morning? A. With lucite blocks.

(Testimony of Otto Grass.)

Q. Why were the changes made as a result of those tests?

A. Because we found it was impossible to make the O ring to fit a blanked out washer so as to fill this void without experimentation.

Q. You found from actual tests that sometimes the O ring was too large for the washer?

A. Yes.

Q. And did you change your tooling accordingly?

A. We would take our molds and grind them down in order to make a washer to fit the standard washer we had then.

Q. Now, do you know whether or not when those changes were made the dimensions were changed on the data sheets? A. No.

Q. That the Wolfe Company was using?

A. No changes were made on the data sheet except possibly once.

Q. Now, can you tell me whether the actual dimensions on your Duo-Seals conform exactly to the nominal dimensions [775] given on your data sheets? A. They do not.

Q. Do they fall within the tolerances?

A. They would fall within a tolerance, yes.

Q. Then the dimension appearing on your data sheet would not necessarily be the dimension of the actual Duo-Seal for that nominal size, is that right?

A. That's right.

Q. How are these data sheets used by the airplane engineers?

(Testimony of Otto Grass.)

A. They are used to determine the size of the space they have to apply this seal.

Q. That is the inside diameter? A. Yes.

Q. Of the O ring.

A. The inside diameter to the bolt, and the o.d. to the space they have limited to put it in.

Q. Those are the principal dimensions the engineer is concerned with? A. Yes.

Q. In referring to Exhibit U, Mr. Lee called your attention to some projections on the O ring.

A. Yes.

Q. Is that commonly known as flash?

A. That is commonly known as flash on the parting of a [776] mold.

Q. Now, does that flash on the O ring occur at the top and bottom or on the inside and outside?

A. On the inside and outside.

Q. And according to that standard sheet, what is the maximum flash permissible?

A. Three thousandths high and five thousandths maximum in width.

Q. Were you acquainted with that standard sheet, Exhibit U, during the spring of 1949 and, say, during the year 1950?

A. Well, similar to this, if not this exact one.

Q. Did you use those standard sheets at all in determining dimensions of the O rings that went into the Lock-O-Seals? A. No.

Q. Did you make any difference to it at all?

A. No.

Q. I wish in this Exhibit 16 you would explain

(Testimony of Otto Grass.)

to the court what it was you were showing on this sketch, what you really have shown here.

The Court: I think this sketch speaks for itself, doesn't it?

Mr. Miller: Well, in a way it does, and I think it would take some little explanation on the way as to what [777] he was trying to show here.

Q. Can you explain what you were showing here?

A. The idea of this 45 angle was to give more bonding surface to hold the rubber, and at the same time to push the rubber toward the bolt.

The Court: Were you taking a part out of the rubber itself? Were you taking this triangle out of the rubber or were you still using a round O ring?

The Witness: No. We made the washer this shape, put it in a mold, and then molded the rubber into the metal washer.

The Court: So what you really did then was that you had an O ring then which was not a true O ring.

The Witness: No, your Honor.

The Court: Isn't that right?

The Witness: That's right. [778]

Q. (By Mr. Miller): Did you make any explanation of that kind of construction to anyone, to your knowledge, with the Franklin C. Wolfe Company?

A. No, sir.

Mr. Fulwider: May I have that question, please?

(Question and answer read.)

Q. (By Mr. Miller): When, do you have any

(Testimony of Otto Grass.)

way of fixing the approximate time it was that you heard of this request or bid for making the Stat-O-Seal?

The Court: As to making a mold.

Mr. Miller: Pardon me. I misspoke myself now. I will rephrase the question.

Q. What I am after is, do you have any way of fixing the time now when you heard that the Franklin C. Wolfe Company wanted you to submit a bid for a mold to make the Stat-O-Seal?

A. No, I can't fix a time.

Mr. Miller: That is all.

The Court: Any other questions?

Mr. Fulwider: I think we have a few now, your Honor.

Redirect Examination

Q. (By Mr. Lee): Did you say, Mr. Grass, that you made changes in the size of these rubber metal parts while you were making Lock-O-Seals for the Wolfe Company? [779] A. No, I didn't.

Q. You did not? A. No.

Q. You did not make any changes in the sizes?

A. I did make changes.

Q. You did?

A. On rubber. Now, you said rubber and metal.

Q. I see. On the rubber you made changes in the sizes? A. Yes.

Q. And when was that?

A. From time to time as we found out they were extruding or not sealing.

(Testimony of Otto Grass.)

Q. And which sizes did you change?

A. That would be hard to tell, but particularly we changed the 3/16 that I know of, because the print was changed. That is the only one we changed the data sheet on.

Q. You say from time to time. Do you recall how many times?

A. Possibly 10, 15. We had 25, 26 molds, and we changed most all of them, so it must have been a considerable number of times.

Q. And when was that? Can you fix it at all?

A. No. It was over the period of the time we [780] manufactured these, over a period of two years perhaps.

Q. Over a period of two years, and when would that two year period start?

A. That I couldn't tell you. When we started to manufacture until we quit manufacturing.

Q. Were these changes in the mold made to get the rubber to come out as the size shown on the data sheets or were they made in order to change the sizes of the finished part?

A. They were made to make this rubber the proper size to fit the washer we had at that time.

Q. To fit the washer you had at that time?

A. Yes.

Q. In other words, you changed the shape of the finished part?

A. Yes, we changed the finished O ring part.

Q. Then, did you tell Wolfe about these changes, the Wolfe Company people? A. I didn't.

(Testimony of Otto Grass.)

Q. Did you ever have any conversation with Mr. Gross about it? A. No, sir.

Q. Whose authority did you have to make changes in the sizes of the finished parts?

A. It was up to me to make the rings, the O rings to [781] fit the washers we had at that time, to make them fit, to fill the void as you call it, so they wouldn't extrude and yet had enough to seal. I decided whether they were right sizes.

Q. And you never told the Wolfe Company that you changed the sizes of their parts from time to time?

A. No. Only on one instance, I said, and that was a "—10" or 3/16, on which we ground the mold down 2/1000 on each side to make it 66/1000 cross section instead of 70. We changed it in one direction but not in the other.

Q. Was there any magnitude to these changes you are talking about making in those molds?

A. We simply took the molds and put them on a grinder and ground out a couple thousandths over-all surface.

Q. That was the total sum and substance of the change was to take a couple of thousandths off the mold? A. That is right.

Q. So that with the removal of a couple of thousandths the size always, is that the same?

A. That is right.

Q. Isn't there an inspection of procedures for sizes of O rings that you made for the Wolfe Company? A. We didn't inspect them for size.

(Testimony of Otto Grass.)

Q. You didn't inspect them for size? [782]

A. No, sir.

Q. Did they inspect them for sizes, do you know? A. That I don't know.

Q. Did they ever have any inspectors come to your plant? A. Not that I know of.

Q. There was no inspection procedure?

A. Except visual inspection to see that they were fully molded without pits.

Q. And they never had any discussion with you about inspection for sizes? A. Not with me.

Q. And you never knew of any inspections made? A. No, sir.

Mr. Lee: Is Exhibit 77 up here now?

Q. Didn't Rubber Teck make rubber rings to the order and specification of the Wolfe Company?

A. That I don't know, whether we made them to their specification. We made them merely to fit the O ring and the bolt diameter which we knew. We determined the size of the rubber from those two dimensions and not from a data sheet which was not complete enough to give us the information.

Q. The Wolfe Company did order these O rings, didn't they? [783] A. Yes.

Q. And they were supposed to be made to their specifications, weren't they?

Mr. Miller: Wait a minute. Now, wait a minute.

A. We had no specifications except the data sheet.

Q. (By Mr. Lee): What additional information was required in order to make the part?

(Testimony of Otto Grass.)

A. We had the size of the bolt. They gave us samples, when they were making the washers, they gave us samples of the washer. We made a rubber and put it in between two pieces of Plexiglass and tightened it up. If it did not extrude, we assumed it was all right. They did the final testing.

Q. Did you have data sheets similar to Plaintiffs' Exhibit 1?

A. That we made these from?

Q. That the Wolfe Company gave you?

A. I assume there was some, but I never used these sheets because the tolerance was too great to make it work.

Q. But they gave you more than the I.D. of the ring?

A. They gave us the I.D. and the O.D. of the ring.

Q. And the W dimension of the ring?

A. Yes, but we discovered these plus and minus 4 wouldn't work. [784]

Q. The plus or minus——

A. Plus or minus 2.

Q. Would they work? A. No.

Q. What would they have to be?

A. We would determine them by trial and error. I don't know what they were exactly after we made them.

Q. Would they be greater than .002 or less than that?

A. That I can't tell you. We made the ring, put them in the washer and tightened them up. If it

(Testimony of Otto Grass.)

filled the void in it, we assumed they were correct.

Q. The smaller the tolerance the more accurate the part, isn't that correct? A. Yes.

Q. So if your tolerance wouldn't work, you had to make them smaller than that, didn't you? You certainly could not make the tolerances larger than that, could you?

Mr. Miller: Wait a minute.

The Court: That is arguing with the witness, but find out what they did.

Mr. Lee: That is what I want to find out. I believe the witness stated that the tolerances shown in the data sheet would not work, your Honor, and I would like to know why he knows. [785]

The Court: All right. He has testified he made the O rings to conform to certain requirements, not from the data sheets that were presented to him, but from the actual making of the rings, to see if they worked.

Mr. Lee: Well, they had to work from something, and had to start off at a period with the size of something. [786]

The Court: They had these molds and you are asking for the change that was made in the molds, and he is trying to tell you he made the changes in the molds when he found that the O rings here were too large or too small.

Q. (By Mr. Lee): Is it your testimony, Mr. Grass, that all of these O rings that were made by Rubber Teck before you came there didn't work?

A. I don't know.

(Testimony of Otto Grass.)

Mr. Miller: I am going to object to it as assuming here that this witness hasn't testified to.

The Court: I sustain the objection. The witness says he doesn't know. He doesn't know what happened before he got there.

Q. (By Mr. Lee): There were molds there when you came, were there not?

A. Not made by Rohr, no molds ever made by Rohr.

Q. I didn't ask you whether they were made by Rohr or not. I am talking about Rubber Teck.

A. There were a few compression molds, yes.

Q. Were they inaccurate? A. Yes.

Q. They were? A. Yes.

Q. You had to change every one of them?

A. I redesigned all of them in order to make the ring [787] close enough. They were compression molds. The ones I made were transfer molds. The compression mold, if you put rubber in between the two surfaces and squeeze them down, your variation was greater than your tolerance because you couldn't extrude all the rubber out from two flat surfaces.

Q. So it is your testimony any rings made from the molds you found when you came to Rubber Teck were not accurate?

A. I didn't get the full question.

Q. It is your testimony any rings that were made from the molds that were there when you came to Rubber Teck would have been inaccurate?

A. Not any. Some of them.

(Testimony of Otto Grass.)

Q. Some of them?

A. Yes. Some possibly could have been right.

* * * * *

December 20, 1956, 10:00 o'clock a.m.

The Clerk: No. 18237-HW Civil, Rohr Aircraft vs. Rubber Teck, further trial.

Mr. Miller: Your Honor, at this time before we get started, we would like to make a demand that the application on the so-called one-piece Lock-O-Seal or Stat-O-Seal be produced.

The Court: You mean application to whom?

Mr. Miller: For a patent.

Mr. Fulwider: I don't see that that has anything to do with this lawsuit, your Honor. We are not attempting to sue under the application.

The Court: What difference does it make?

Mr. Miller: That's the point here. There is apparently some allegation here that we are accused of infringing a patent because we make a one-piece device. Mr. Fulwider told you at the start that they had an application on the Stat-O-Seal——

The Court: Your motion is denied. [794]

* * * * *

OTTO GRASS

the witness on the stand at the time of the adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Lee): Mr. Grass, were the rubber rings manufactured by Rubber Teck for the Wolfe

(Testimony of Otto Grass.)

Company supposed to fall within the tolerances of the Wolfe data sheets?

A. That I don't know.

Q. You don't know whether they were or not?

A. I don't know whether they were supposed to. We had no blueprints or sketches to make O rings from.

Q. You did have the Wolfe Company data sheets? A. We had a data sheet.

Q. And they were made to the order of the Wolfe Company?

A. They were made to the order of the Wolfe Company. [795]

Q. If the rings you manufactured did not fall within the tolerance of the Wolfe Company data sheets, they could be rejected by the Wolfe Company, could they not? A. They could.

Q. In the course of manufacturing these rings, you did have some rejects from time to time?

A. We had some rejections that came within the tolerances of the sheet because they extruded.

Q. Did you have any other rejects?

A. We had some for not being filled properly, imperfections, visual imperfections in the parts.

Q. And the changes you made in the Rubber Teck molds which you mentioned yesterday were to make sure that these rubber rings would fall within the tolerances of the Wolfe data sheets, is that right?

A. No. To make sure they would not extrude in the washers that we were using at that time.

(Testimony of Otto Grass.)

Q. That they would fall within the tolerances of the Wolfe data sheet?

A. I assume. We never checked it.

Mr. Miller: Your Honor, I——

The Court: The answer is already in. He said he never checked.

Mr. Lee: That's all, Mr. Grass. [796]

Cross Examination

Q. (By Mr. Miller): You say you were never supplied with any blueprints from the Wolfe Company? A. We never were.

Q. For making the tooling for the O rings for the Lock-O-Seals? A. That is right.

The Court: Now, that was gone into the other day. And how is this rebuttal to this testimony this morning?

Mr. Miller: It is not rebuttal to the testimony, but Mr. Lee just asked about it a moment ago.

The Court: He didn't ask about blueprints, did he?

Mr. Miller: I think the witness certainly testified to it or something.

Mr. Fulwider: The witness volunteered they didn't have any.

Q. (By Mr. Miller): Well, did you have any other information from the Wolfe Company on how to make the molds for the O rings for the Lock-O-Seal? A. No, we didn't.

Q. You had to design all of that tooling yourself? A. We did. [797]

* * * * *

FRANKLIN C. WOLFE

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

* * * * *

Direct Examination [798]

Q. (By Mr. Fulwider): Mr. Wolfe, are you the founder of the Franklin C. Wolfe Company, one of the plaintiffs in this case? A. I am.

Q. What is your office with the company?

A. President.

Q. Can you tell me approximately when the Wolfe Company was started?

A. November of 1944.

Q. Prior to that time had you been in the Service, in the Armed Forces? A. The Air Force.

Q. And during approximately what period?

A. Slightly over 20 years.

Q. When did you retire?

A. October of 1944.

Q. And what was your rank?

A. Colonel. [799]

* * * * *

Q. I call your attention to Exhibit 91, which is a license from Rohr to the Wolfe Company. Will you just glance at that? Will you read the first sentence of paragraph 2 of [803] that exhibit on the first page?

A. In the manufacture of sealing devices hereunder, licensee agrees to conform strictly with the specifications furnished by licensor and agrees to use only the best of materials and manufacturing methods.

(Testimony of Franklin C. Wolfe.)

Q. That's fine. You were the licensee, that is, Wolfe Company was the licensee?

A. That's right.

Q. Rohr was the licensor. Did you at about the time you entered into this non-exclusive license agreement with the Rohr Company in 1948 for the manufacture of Lock-O-Seals request from the Rohr Company permission to have Rubber Teck continue with the manufacture? A. I did.

Q. Of Lock-O-Seals? A. Yes.

Q. Do you recall whether you ever wrote to Rohr Company formally making such a request?

A. I did.

Mr. Fulwider: May this be marked for identification?

The Court: It may be marked for identification.

The Clerk: Exhibit 95.

(The exhibit referred to was marked as Plaintiffs' Exhibit No. 95 for identification.)

* * * * *

Q. (By Mr. Fulwider): I show you Exhibit 95, being on Wolfe Company stationery, and addressed to Rohr Aircraft Corporation, attention Mr. Shepard, dated November 15, 1948. Would you read the first two paragraphs of that letter?

A. "Dear Mr. Shepard:

"Enclosed please find signed copy of the license agreement per U. S. Patent No. 2,396,005. In connection with paragraph 2 of page 1 concerning subcontracting for or sublicensing the manufacture of sealing devices, since Rubber Teck, Inc., of Gar-

(Testimony of Franklin C. Wolfe.)

dena, California, are presently manufacturing Lock-O-Seals for this company, we would like to continue with this arrangement under a separate agreement to be entered into with that company subject to your approval. Such approval by your office will be appreciated.” [806]

Mr. Fulwider: I would like to offer that in evidence, if I may, your Honor.

The Court: It may be received as Exhibit 95.

The Clerk: Exhibit 95.

(The document referred to was received in evidence and marked as Plaintiffs’ Exhibit No. 95.)

[See page 776.]

Q. (By Mr. Fulwider): Did you receive a reply to that letter? A. Yes, I did.

Mr. Fulwider: Will you mark this, please?

The Clerk: Exhibit 96 for identification.

(The document referred to was marked as Plaintiffs’ Exhibit No. 96 for identification.)

Q. (By Mr. Fulwider): Calling your attention to Exhibit 96, which is a letter addressed to Mr. F. C. Wolfe from the Rohr Aircraft Company, will you please read that? It is very short.

A. “Dear Mr. Wolfe:

“We acknowledge receipt of your letter of November 15th, together with one copy of executed license agreement.

“We would be pleased to review your tentative agreement with Rubber Teck for the manufacture of Lock-O-Seals and if satisfactory will approve

(Testimony of Franklin C. Wolfe.)

such agreement as provided in the terms of the license agreement.”

Mr. Fulwider: I would like to offer that. [807]

The Court: It may be received.

The Clerk: Exhibit 96.

(The document referred to was received in evidence and marked as Plaintiffs' Exhibit No. 96.)

[See page 777.]

Q. (By Mr. Fulwider): Now, what was the reason for your requesting that Rubber Teck continue the manufacture of Lock-O-Seals for you?

A. Well, we had had a good relationship with them, they had been able to supply our requirements, had met our specifications. We saw no reason for changing the manufacture.

Q. Did Rohr or Mr. Shepard on behalf of Rohr put any pressure on you whatsoever to request this approval or to continue with Rubber Teck?

A. No, there was no pressure.

Q. Calling your attention to Exhibit 17 which is titled Manufacturing License Agreement between Franklin C. Wolfe Company and Joe Kerley, I wonder if you will read for me the first sentence of paragraph 2 of that agreement.

A. “In the manufacture of sealing devices hereunder, licensee agrees to conform strictly with the specifications furnished by licensor and agrees to use only the best materials and manufacturing methods. Licensee agrees not to contract for the manufacture of all or any component parts of said

(Testimony of Franklin C. Wolfe.)

sealing devices hereunder without first securing consent of licensor." [808]

Q. Now, will you read the first sentence of paragraph 3 of Exhibit 92, which is the license agreement between Rohr and Wolfe Company, dated 25 July 1950, paragraph 3 this time.

A. "In the manufacture of the invention, licensee agrees to conform strictly with the specifications furnished by licensor and agrees to use only the best of materials and manufacturing methods. In the sale of the invention the licensee agrees to use only legitimate and generally accepted sales methods. Licensee agrees not to"— [809]

Mr. Fulwider: I only wanted the first sentence.

Now, going back to the date of that agreement that you just read, to the date of your earlier license agreement with Rohr in 1948 and the Exhibit No. 17 agreement between Wolfe Company and Rubber Teck, in 1948, did anyone at Rubber Teck raise any objection to the Wolfe Company continuing with the sales of the Lock-O-Seal?

A. No, sir.

Q. Did anyone at Rubber Teck say anything to you, to the effect that they did not wish you to have a license arrangement with Rohr?

A. Not to my knowledge.

Mr. Fulwider: Now, since the Green and Kyle agreement is in evidence, I would like to offer at this time a letter. I will get it. Mr. Miller has it, I think, here. That is this one here.

(Mr. Miller examines document.)

(Testimony of Franklin C. Wolfe.)

Mr. Miller: I don't get an opportunity to listen in Court and read letters at the same time, Mr. Fulwider.

Mr. Fulwider: Will you mark this the next number?

The Clerk: 97 for identification.

The Court: It may be marked.

(Said document was marked Plaintiffs' Exhibit 97 for identification.)

Q. (By Mr. Fulwider): I call your attention, Colonel, to Exhibit No. 97, being a copy of a letter on Franklin C. [810] Wolfe Company stationery addressed to Rohr. Wait a minute, wait a minute. Yes, that is right. Addressed to Rohr Aircraft. Will you read that, the whole letter, please? It is very short.

A. "Dear Mr. Shepard:

"It will be appreciated if a letter is forwarded to this office cancelling the non-exclusive manufacturing and sales license on Lock-O-Seal. While the new exclusive agreement covering the same subject naturally supersedes the non-exclusive agreement, such a notification is desired because of the necessary change of status that will be effected in connection with our original agreement with Mr. Joe Kerley of Rubber Teck, Inc. covering a sub-contracting manufacturing agreement."

Mr. Fulwider: Just a minute. I got these out of order. I am sorry, your Honor. That isn't the one. I had them arranged here and then they got mixed up. I want the letter marked 49. Where

(Testimony of Franklin C. Wolfe.)

is the letter marked 49? Did I give it to you? Here it is. Will you mark this one? This is the one I meant to have marked before.

The Court: It may be marked Exhibit 98.

Mr. Fulwider: After this one.

The Clerk: This is 98.

(Said document was marked Plaintiffs' Exhibit No. 98 for identification.) [811]

Q. (By Mr. Fulwider): Calling your attention to Exhibit No. 98, which is a letter from Rohr Aircraft Corporation to Green Rubber Machine Works, indicating a copy came to F. C. Wolfe, do you recall getting a copy of that letter? A. I do.

Mr. Fulwider: I don't think it is necessary to read that. I would like to offer it in evidence, your Honor. It is a letter concerning the cancellation of that old Green-Kyle agreement.

The Court: It may be received in evidence.

The Clerk: No. 98.

(Said document received in evidence as Plaintiffs' Exhibit No. 98.)

[See page 779.]

The Court: 97 is not in yet; it has only been marked.

The Clerk: That is right.

Mr. Fulwider: Yes.

Q. Now, would you read now the balance of 97?

A. "It is further requested that our company be authorized to subcontract to Rubber Teck, Inc. the manufacture of any components of Lock-O-Seal that may be desired.

(Testimony of Franklin C. Wolfe.)

“Your immediate attention to the above matters will be appreciated.”

Mr. Fulwider: Now, I offer in evidence Exhibit 97, your Honor. [812]

The Court: It will be received in evidence.

The Clerk: Exhibit 97.

(Said document was received in evidence as Plaintiffs' Exhibit No. 97.)

[See page 778.]

Mr. Fulwider: Now, I hand you a letter. First, let's mark it.

The Clerk: 99 for identification.

(Said document was marked Plaintiffs' Exhibit No. 99 for identification.)

Q. (By Mr. Fulwider): I call your attention to Exhibit 99 which is a letter from Rohr Aircraft Corporation to Franklin C. Wolfe Company. Will you read the second paragraph only of this letter? I think that is all that pertains to this.

A. “Paragraph 3 of the exclusive agreement requires our consent to your manufacturing source. We are pleased to advise that we approve Mr. Joe Kerley as a source of supply under this agreement.”

Mr. Fulwider: I would like to offer that in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: Exhibit 99.

(Said document was received in evidence as Plaintiffs' Exhibit No. 99.)

[See page 780.]

(Testimony of Franklin C. Wolfe.)

Mr. Fulwider: Now, in evidence is the sales agreement [813] between Wolfe Company and Rubber Teck, and there has been testimony to the effect that it was terminated. I think, to make the record complete, we should offer the letter which did terminate it, so that the documents are complete.

The Clerk: Exhibit 100 for identification.

(Said document was marked Plaintiffs' Exhibit No. 100 for identification.)

Mr. Fulwider: I don't think this needs any testimony. That is offered in evidence as the letter.

The Court: It may be received in evidence.

The Clerk: No. 100.

(Said document was received in evidence as Plaintiffs' Exhibit No. 100.)

[See page 782.]

* * * * *

Cross Examination

Q. (By Mr. Miller): What specifications on Lock-O-Seals did you get from Rohr at the time that you acquired this agreement, Exhibit ninety—— [815]

The Court: Well, now, for the purpose of anybody who reads the record, it would be more intelligible if instead of reading the exhibit numbers, you also use the "first agreement" and the "second", and the first was a non-exclusive and the second was an exclusive.

Mr. Miller: All right.

Exhibit 91, the agreement of 1948.

(Testimony of Franklin C. Wolfe.)

The Court: That is the non-exclusive.

Mr. Miller: That is right, that is the first agreement they had.

Mr. Fulwider: What was the question?

(Pending question read.)

Q. (By Mr. Miller): (continuing) —91.

Mr. Fulwider: May I inquire, you mean the particular specification as to size or specification of sheets or what?

The Court: Let us broaden the question and say, what did you get from Rohr, not only on specifications—

Mr. Miller: All right, I will broaden the question.

The Court: But also on the molds or anything else, what did you get from Rohr?

A. We received from Rohr, as I remember, a specification and data sheet similar to the type that we ourselves are now using, showing the dimensions and tolerances of various sizes. [816]

Q. You refer to Exhibit 1.

A. I don't know. This is the type of information that we got from Rohr, yes.

Q. Is that all the information you got from Rohr?

Mr. Fulwider: I object as going beyond the scope, your Honor. I deliberately held this witness down in the scope of his examination so we won't go far afield.

Mr. Miller: You had him read this paragraph 1.

The Court: Let me see if I can ask the witness

(Testimony of Franklin C. Wolfe.)

a question. I want to know some information myself.

When you got this first agreement, that is the non-exclusive agreement, Rubber Teck or its predecessors were manufacturing the seals?

The Witness: That's right, sir.

The Court: And ostensibly they had gotten the information from Rohr? You don't know?

The Witness: I don't know that.

The Court: We assume they got the information from Rohr.

The Witness: It originated from Rohr.

The Court: When you got this first agreement, that is the non-exclusive agreement, when you got it, you had no facilities for the manufacture of seals, did you?

The Witness: That's right, we did not.

The Court: So somebody had to manufacture them for [817] you.

The Witness: That's right.

The Court: So there was a period of time there you did not manufacture any seals, but the seals were manufactured by Rubber Teck?

The Witness: That's right.

The Court: When you first got this non-exclusive agreement, you didn't get any molds or tools or equipment or anything like that relative to setting you up in business for manufacturing seals?

The Witness: That's right.

The Court: All you got is some written memorandum.

(Testimony of Franklin C. Wolfe.)

The Witness: Specifications, that's right.

The Court: Specifications?

The Witness: That's right.

The Court: How long did Rubber Teck or its predecessor continue to manufacture the seals for you? To the second agreement, to the exclusive agreement?

The Witness: Past that.

The Court: Past that?

The Witness: Yes, sir. I don't remember the date exactly when they did stop manufacturing, but it was after the second agreement.

The Court: Then when you got the second agreement, which was an exclusive agreement, did you get from Rohr anything [818] other than the data sheets that you have been talking about? Did you get any molds, that is, from Rohr now?

The Witness: No physical equipment.

The Court: No physical equipment?

The Witness: No, sir.

The Court: You did get some physical equipment from Rubber Teck, didn't you? Isn't there some testimony that Rubber Teck turned over to you certain molds?

Mr. Miller: Some dies, your Honor, not molds.

Mr. Fulwider: Washer dies.

The Court: All right. You got some physical equipment from Rubber Teck.

The Witness: Yes.

The Court: When?

(Testimony of Franklin C. Wolfe.)

Mr. Fulwider: It was in 1951 some time, your Honor.

The Court: In relation to this second agreement?

Mr. Fulwider: It was about a year after that.

The Witness: It was after that, yes, sir.

The Court: It was after the second agreement?

The Witness: Yes.

The Court: So while you got the first agreement and got the second agreement, you never got any physical properties from Rohr?

The Witness: That's right.

The Court: Or physical properties from Rubber Teck? [819]

The Witness: Yes.

The Court: All you had were sheets of specifications and that sort of thing? .

The Witness: That's right.

Mr. Miller: I want to inquire about these specifications. To me, this is not a specification.

The Court: He says that is what he got.

Mr. Miller: I want to know if this was all he got in the way of blueprints or written instructions or written specifications.

The Witness: This is headed Lock-O-Seal Specifications, Series 2.

Q. (By Mr. Miller): Is that the only specification? A. That is the only——

Q. That you got from Rohr?

A. I couldn't answer that. There may have subsequently been a lot of additional sizes added

(Testimony of Franklin C. Wolfe.)

which would require the same type of information.

Q. Did you get that subsequent data sheet from Rohr?

A. I don't know that there was a subsequent data sheet. There probably was additional information as new sizes came about. During this whole time the Rohr laboratories and the Wolfe Company worked quite closely, and in a number of cases during verbal conversation, Mr. Gross, or possibly one of his men, would pass on information as to dimensions, tolerances, [820] and so forth.

Q. The agreement, Exhibit 91, that is the first non-exclusive license agreement, said in paragraph 2, "In the manufacture of sealing devices hereunder licensee agrees to conform strictly with the specifications furnished by the licensor."

A. Right.

Q. Was Exhibit 1 the only specification that you had to go by in complying with paragraph 2?

Mr. Fulwider: Object, your Honor.

The Court: He has answered he doesn't know.

Mr. Fulwider: He already said it was not.

The Court: He said he didn't know, there probably were some others, but he didn't know.

Mr. Fulwider: That's right.

Q. (By Mr. Miller): Do you have any recollection of receiving any other specifications or data sheet than Exhibit 1? A. I don't recall.

Q. At the time that you acquired the first license agreement? A. I don't recall.

Q. Did you undertake to make any inspection

(Testimony of Franklin C. Wolfe.)

of the Lock-O-Seals that you got from Rubber Teck to see whether or not they complied with the specifications, Exhibit 1, that you got from Rohr?

A. Personally, I didn't. We did inspect them.

Q. Who did the inspecting work?

A. Well, people in our inspection department or in——

Q. Can you name them?

A. No, I can't name them.

Q. Do you know the nature of the inspection that they made?

A. I believe both the retainer and the O rings were miked and measured for tolerance or within tolerance.

The Court: Mr. Miller, there isn't one word of evidence in this case that any of the work that was done by Rubber Teck was defective and not in accordance with specifications, and not entirely satisfactory. There has been nobody said, "The rings were unsatisfactory, we had to reject them, we had to turn them back."

So I assume that regardless of whether they are inspected or not, they were satisfactory. What difference would it make?

Mr. Miller: I am still floundering in the dark, your Honor, as to the second cause of action.

The Court: Let's don't flounder any more. We are pretty near ashore. Let's keep on going. [822]

* * * * *

PAUL F. SMITH

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Fulwider): By whom are you employed, Mr. Smith?

A. Franklin C. Wolfe Company.

Q. Approximately how long have you been in the employ of the Wolfe Company?

A. Since August, 1949.

Q. What is your position with the Wolfe Company? A. General manager. [831]

* * * * *

Q. At the time you joined the Wolfe Company in August, 1949, they were manufacturing or, rather, were selling Lock-O-Seals, weren't they?

A. Yes.

Q. And those Lock-O-Seals were manufactured by Rubber Teck? A. Yes.

Q. Did the Wolfe Company require Rubber Teck to manufacture the products to certain tolerances? A. Yes.

Q. I call your attention to Exhibit 1, which is dated 5/18/49. Do you recognize that data sheet?

A. Yes.

Q. Can you tell me whether or not that data sheet was in effect as prescribing tolerances to be met by Rubber Teck at the time you joined the Wolfe Company in August, 1949?

A. I can't be sure if this is the one. I notice

(Testimony of Paul F. Smith.)

this is Change D, which indicates it is the fourth or fifth print under the same number or the fourth or fifth change. Whether this D change was the one in use at the time I went to work for the Wolfe Company, I can't say. [833]

Q. It is typical of sheets that were being used by the Wolfe Company at the time you went to work for them? A. Yes, sir.

Q. Is it likewise typical of data sheets that were prepared in the next several years?

A. The data itself is typical, yes.

Q. Was it the practice of the Wolfe Company as new data sheets were made up or changes in old data sheets were made, to send them or deliver them to Rubber Teck? A. Yes.

Q. Did the Wolfe Company inspect the rubber rings that were delivered to it by Rubber Teck?

A. Yes.

Q. Will you tell us very briefly the nature of the inspection, how that was accomplished?

A. We made a cone-shaped device, having a very gradual taper. About every half inch down the length of this device would be a little ring and a mark showing that was a certain specific diameter. We would drop the O ring down freely and squarely on this cone, and the marks would indicate the inside dimension. While it was held on the cone, we would use a pair of micrometers and measure the outside dimension, and we would use micrometers to measure the thickness.

Q. And these tests that you have just described

(Testimony of Paul F. Smith.)

are tests run on rings delivered by Rubber Teck?

A. Yes.

Q. If the rings delivered to you by Rubber Teck didn't fall within the tolerances prescribed by the Wolfe Company as shown by these tests, were they rejected?

A. Yes.

Q. If they met the tolerances, they were satisfactory?

A. Yes.

Q. I would like to call your attention to Exhibit 7, which is a series of data sheets all clipped together, I think. I call your attention to this Exhibit 7, which is a series of sheets, I believe arranged in chronological order. Will you tell us briefly first what those sheets are, what they represent?

A. They are dimensional specifications of the rubber and metal portions of Lock-O-Seals.

Q. Now, starting with the top sheet—first, are they likewise typical of sheets given to Rubber Teck during the period that they were manufacturing Lock-O-Seals for the Wolfe Company?

A. Yes.

Q. Starting with the first sheet, will you identify or explain briefly what each sheet shows and indicates with respect to Lock-O-Seals?

A. The first sheet gives the data dimensions and tolerances of the metal retainer portion of the Lock-O-Seal, and [835] was used for manufacturing purposes and in plant, in our plant inspection of metal retainers.

Q. All right.

(Testimony of Paul F. Smith.)

A. The second sheet is similar except it describes the rubber O ring dimensions.

Q. Do those two sheets you have just described have on them tolerances? A. Yes.

Q. And is this second sheet you have just mentioned manufacturing tolerances like the first one you said?

A. Yes. These drawing were used for manufacturing purposes as being slightly different with tighter dimensions, closer dimensions than the published data sheets that would be possibly used by the inspectors at our customers, allowing us a little bit of leeway in perhaps a method of measuring.

Q. Do I understand that as to some sizes that you require the manufacturer to meet slightly tighter tolerances, shall we say, than you advertised to the trade? A. Yes.

Q. Why was that?

A. If we used as broad tolerances as was shown in our sales literature, we could get beyond the proper dimensioning because of the accumulation of those tolerances and have a part that might be substandard in performance.

Q. What does the third one show? [836]

A. The third sheet is typical of the type of drawing we supply to the customer's inspection department, their receiving inspection department. Generally, they don't like to use sales literature for inspection. They want a sheet for their book, and this was prepared for that purpose.

(Testimony of Paul F. Smith.)

Q. That sheet was used by the customers' inspectors? A. Yes.

Q. On Lock-O-Seals that you delivered?

A. Yes. The next sheet is a repetition of one of the others, manufacturing purposes for the metal retainer, calling out additional specifications for added types of steels that might be used in Lock-O-Seals.

Q. How about the last one?

A. I didn't hear you.

Q. The next one, please.

A. The next sheet is the same.

Q. Is that manufacturing tolerances of customer inspection tolerances, the last one?

A. This would be manufacturing tolerances, I believe. Without getting into detail comparison, I am not sure, but I believe it would be. It shows, I believe, one or two additional types of steels that might be applicable. It also shows a change in dimension from the previous sheet adding—it says Changed Dimensions on our Size 10 3/16 and our size 1/4. It is a later print, approximately 10 months later. [837]

Q. (By Mr. Fulwider): As I understand it, in 1949, when you came with the Wolfe Company and for some time thereafter, Rubber Teck supplied the completed part, that is to say, both the rubber rings and the metal washers, is that right?

A. Not exactly. During those initial stages, they supplied us with nothing but a bill for the merchandise. As we gave them a copy of our sales

(Testimony of Paul F. Smith.)

order, gave them two copies, one which became the packing slip, and the other copy became in essence their purchase order and was continued by them, and it told them where to ship it, how to ship it, to what customer. They did not ship it to us.

Q. That is, they shipped directly both the metal washers and the ring as a complete product?

A. Yes.

Q. Directly to the customer? A. Yes.

Q. Do you recall when that procedure was changed?

A. It would be about the middle of 1950.

Q. Or approximately 1951?

A. It might have been a little later in '50, sometime after we moved to the Mississippi address and before we moved to the Culver City address is the only way I could associate the time.

Q. In that general period. After that change was made, [838] tell me what was that change or what precipitated that change? Did you buy the dies from Rubber Teck for making metal washers?

A. Yes, we arranged with them to buy the dies that were in possession of Pacific Cut Washer, and buy the washers directly from Pacific Cut Washer Company as they had been doing. As to what precipitated it, it is my recollection that we felt—

Q. I didn't mean what precipitated the change, other than just buying the dies. Then after you made that change, then Pacific Cut shipped the washers to you, I take it, and then you assembled and sent out the product, is that correct?

(Testimony of Paul F. Smith.)

A. Yes.

The Court: Where did you get the O rings?

A. We bought them from Rubber Teck.

The Court: You still bought them?

A. Yes.

Q. (By Mr. Fulwider): After that time, when you—and when I say “you”, I mean the Wolfe Company,—started doing your own assembling and shipping——

The Court: What year was that you started doing your own shipping?

A. About the middle or the latter part of 1950, at the time we bought the dies. That, I suppose, could be [839] established.

The Court: That is all right, the latter part of '50.

Mr. Fulwider: I think it was in the early part of '51. There is about a six months period there that we haven't pegged. About the first of 1951.

Q. After that time when you started shipping these directly to the customers, did you purchase all of your requirements for the rubber rings used in Lock-O-Seals from Rubber Teck, Inc. up until the time, say up until the time you knew they were making a Duo-Seal?

A. With one exception which I believe has been discussed before.

Q. It was mentioned just briefly. You might explain that.

A. In one period I believe in 1952, we received a very, very large order for quite a number of

(Testimony of Paul F. Smith.)

Lock-O-Seals. The capacity to produce them was beyond Rubber Teck at the time. They didn't want to tie their whole plant up exclusively with this thing for months, because they had other customers, and we had a few presses, and we agreed we would make part of it and they would make part. And we made some models. I believe they made a couple of models or supplied a couple of models to us to help so we could jointly get this order filled.

Outside of that one specification, to the best of my [840] knowledge, we had never made or purchased elsewhere a single Lock-O-Seal O ring from anyone except Rubber Teck.

Q. In connection with this large Government order that you mentioned, did you and Rubber Teck work fairly close together in getting out that order?

A. Yes. We worked close together, about fifteen hours a day, to keep up with the schedule. It was the first big thing that ever happened to either one of us.

Q. And did that work run over a period of three months?

A. It possibly took four months of production and filling of the orders, possibly five.

Q. And as I understand, this arrangement for you to assist in the manufacture of these rings for the Government on that large order was agreeable to Rubber Teck?

A. Yes, sir.

Q. They never indicated to the contrary?

A. No. They worked with us and knew, with

(Testimony of Paul F. Smith.)

full knowledge of it, even before we received the order, because we couldn't bid on the order unless we were sure it could be produced, and we arranged that even before we made our quotation on the order, that we felt we jointly could do it.

Q. Was that joint effort, at least the cooperation exhibited in that joint effort, the usual procedure during [841] the period Rubber Teck and your company worked together? A. Yes.

Q. Was that cooperation a case of cooperating together in many efforts?

A. During most of that period we acted as their sales representatives for their job rubber, and we practically lived together as a family, slept together day and night. I was in their plant up to 1952 almost twice a day as an average, and we all were back and forth.

Q. And in connection with that, you said you had many conversations and conferences. Was that fairly continuous over this entire period of relationship with Rubber Teck?

A. From 1949 up through '52, yes. At that time I was so tied up in the plant, my personal contacts with them were dropped off considerably.

Q. Did the Wolfe Company have a similar relationship with the Rohr Company? By "similar" I mean cooperative relationship?

A. Yes, we had the use of their laboratory facilities or at least they would do almost anything we asked them to do in their laboratory. In fact, they were committed to, under our agreement and

(Testimony of Paul F. Smith.)

it was—Mr. Gross was part of the “family”.

Q. And did Mr. Gross, in behalf of Rohr, collaborate [842] with you, and I assume with the Rubber Teck people, in the design of new parts, the use of new sizes and modifications on Lock-O-Seals?

A. Up to about the middle of '51, yes. About that time we had acquired our own laboratory and started to do our own experimental work on compounds in conjunction with Mr. Gross, and gradually did more as time went on.

Q. And did the Rohr Company submit to you from time to time reports on this testing department experimental work they did for the Rohr Company? A. Yes.

Q. Did you transmit any of those or show any of them to personnel of Rubber Teck?

A. I can't remember any specific situations. I am sure I did.

Q. Do you remember whether or not you gave them the information in the reports, discussed the information—— A. Yes.

Q. ——with personnel of Rubber Teck?

A. Definitely.

Q. I call your attention very briefly to Exhibits 24 to 29. Is Exhibit 24 typical?

I call your attention to Exhibits 24 and 25; are those typical of the type of Rohr Aircraft report that you just mentioned as having been submitted from time to time [843] to you by Rohr Company?

A. Yes.

(Testimony of Paul F. Smith.)

Q. And is the same true of Exhibits 26 and 27, which I hand you now? A. Yes.

Q. And 28? A. No.

Mr. Fulwider: "No" to 28. Maybe I got the wrong one in there.

The Witness: 28 is more of a summary of various evaluation tests and wouldn't be typical because it would be the unusual under my interpretation.

Q. Do you recall having seen any of those Exhibits 24 and 28?

A. I don't recall 24. I do the rest, yes.

Q. Now, I believe the Wolfe Company manufactures a one-piece fastener seal, does it not?

A. Yes.

Q. Presently sold under the trademark Stat-O-Seal? A. Yes.

Q. Was it initially sold under the trademark Lock-O-Seal? Was it called one-piece Lock-O-Seal?

A. It may have been a Lock-O-Seal. I know it was for some time referred to as a one-piece Lock-O-Seal.

Q. Did you at that time——

The Court: When did you first start to manufacture a one-piece seal?

The Witness: The word manufacture is rather broad, your Honor.

The Court: When did you start to put it upon the market then?

The Witness: Put them on the market, yes.

The Court: You manufactured—when did you first start to sell them?

(Testimony of Paul F. Smith.)

The Witness: It wold be in June or July of 1952 that we first offered them to the trade.

The Court: Do you know when the defendant first [845] offered its one-piece seal to the market?

The Witness: No, I don't.

The Court: Do you know whether it was before or after 1952?

The Witness: I know when I first saw the defendants' Duo-Seal, it was a long time after we had been producing and selling Stat-O-Seals or one-piece Lock-O-Seals.

Q. (By Mr. Fulwider): Are the one-piece seals called Series 600? A. Yes.

Q. That is true of the Stat-O-Seals today?

A. Yes.

Q. They are Series 600? A. Yes.

Q. Was that also true when they were being sold as one-piece Lock-O-Seals? A. Yes.

Q. Have they always been called Series 600?

A. The first few months of development, they probably had no number. That number is only used when we have decided to make it a catalog item and put it into our catalog. Up to that time we used drawing numbers and not a series number.

Q. I call your attention to Exhibit 15, which is a loose-leaf notebook with a number of Franklin C. Wolfe sheets in it, and particularly to this sheet, which I will mark with [846] an X down here in the corner, the lower right-hand corner. Will you read the title, please?

A. One-Piece Lock-O-Seal, Aircraft Series 600.

(Testimony of Paul F. Smith.)

Q. Will you explain to the court what that sheet indicates?

A. It is a specification sheet showing the basic dimensions of about 10 sizes of one-piece Lock-O-Seals, the method of calling it out to obtain specific types of rubbers and metals in combination as desired.

Q. Does it illustrate a construction of the Stat-O-Seal, what was then the one-piece Lock-O-Seal, at least schematically?

A. To a reasonable extent, yes.

Mr. Fulwider: I don't believe this has been offered yet, so I would like to offer 15 in evidence at this time.

The Court: It may be received in evidence.

The Clerk: Exhibit 15.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 15.)

Q. (By Mr. Fulwider): Now, calling your attention to Exhibit 22, which bears the title at the top, Stat-O-Seal Bolt or Stud Seal, Series 600, will you explain to me what that is, what it shows?

A. This, with some additions, is identical to the previous [847] exhibit as marked except it is called Stat-O-Seal, Bolt or Stud Seal, Series 600. This is a later issue and shows additional sizes and additional materials combinations.

Q. Is that the same product that is shown in Exhibit 16, the sheet in the loose-leaf book you just looked at?

A. Yes.

(Testimony of Paul F. Smith.)

Q. The same product, merely sold under a different trademark? A. Yes.

Q. But carrying still a notation, Aircraft Series 600?

A. It doesn't say Aircraft Series in this case. It merely says Series 600.

Mr. Fulwider: I would like to offer that in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: Exhibit 22.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 22.)

[See Book of Exhibits.]

Q. (By Mr. Fulwider): I believe you stated just a moment ago that Wolfe Company started manufacturing this Series 600 fastener seal, one-piece Lock-O-Seal or Stat-O-Seal in—what was it—June or July, 1952?

A. I said they offered them to the trade at that time.

Q. Can you tell me when the development work on the one-piece Lock-O-Seal started, approximately? [847a]

A. Started working on the project in late 1950, as close as I can come. I know we started in the Mississippi Street building and we moved from there in middle 1951, so it would be early 1951, maybe late 1950.

Q. That would be in 1951, you say?

A. Early 1951.

(Testimony of Paul F. Smith.)

The Court: You started to do work on this single seal then about the same time you started to do your own shipping, is that right?

The Witness: It would be a little later. We had acquired our laboratory by that time and that was a little after we started doing our own shipping.

The Court: You said a little while ago you started to do your own shipping the latter part of 1950, early part of 1951.

The Witness: Yes.

The Court: Now you say you started to work on the single seal in 1950.

The Witness: The latter part of 1950.

The Court: I beg your pardon?

The Witness: I say the latter part of 1950 or early 1951.

The Court: So you started to work on the single seal about the time you started to do your own shipping?

The Witness: It would be very close, a matter of a [848] few months.

Q. (By Mr. Fulwider): Going to the year 1952, was considerable experimental work done in the first half of 1952 with respect to the one-piece seal?

A. Yes. We had determined the criteria for the design and were working on ways of producing the rather complicated metal retainer. We withheld them from the market until we had reasonably licked the problems, which were considerable.

Q. I call your attention to Exhibit 60. Will you explain briefly what Exhibit 60 shows in relation

(Testimony of Paul F. Smith.)

to the development or manufacture of one-piece seals by Wolfe Company, Exhibit 60 being a drawing No. MD-710, dated 4/18/52?

A. This is a drawing of the mold insertion to form the rubber into the metal retainer and cure it in that position.

Q. Does that drawing show the shape of the metal retainer?

A. No. It merely shows the detail dimensions of the mold and the method of sprueing.

Q. Will you refer to Exhibit 61, which is a Wolfe Company drawing No. MD-701-A bearing date 5/3/52, and explain what that shows?

A. This shows the detail dimension and configuration of the rubber portion of the seal after it has been vulcanized into the metal retainer, the finished product.

Q. That shows a completed one-piece seal? [849]

A. Yes.

Q. Or a portion of it? A. Yes.

Q. Is that a cross-sectional view?

A. That is a cross-sectional view with all details, with the exception of the details of the metal portion itself.

Q. Will you take this red pen and draw a lead line out from the extended metal portion of the washer and label that M?

A. (Witness complying.)

Q. Now, will you take and make a lead line out from the rubber portion and label that R?

A. (Witness complying.)

(Testimony of Paul F. Smith.)

Q. Referring now to Exhibit 62, which is a Wolfe Company drawing No. MD-710-C and bears date 5/5/52, will you explain to the court what this drawing shows?

A. 62 shows the detailed dimensioning of a rubber mold, a section of a rubber mold to produce the one-piece Lock-O-Seal. This would be the mold into which the rubber was injected and vulcanized onto the metal retainer.

Q. Anything else of note on there?

A. Merely it says "Mold Insert for $\frac{1}{4}$ inch one-piece Lock-O-Seal."

Q. Referring to Exhibit 63, Wolfe Company drawing No. [850] MD-702, bearing date 6/7/52, will you explain what this drawing shows?

A. This shows a portion in cross-section of the rubber portion of a finished one-piece Lock-O-Seal, giving all the pertinent dimensions, describing the geometry of the rubber configuration in detail.

Q. Will you mark in red on that drawing the metal and rubber parts and indicate them as M and R, as you did in the earlier drawings?

A. (Witness complying.)

Q. Now, referring to Exhibit 64, Wolfe Company drawing—it doesn't seem to have a number, but it is dated 7/11/52, will you explain to us what that shows? It carries the legend at the top Transfer Mold, one-piece Lock-O-Seal.

A. This describes schematically an assembled multiple cavity mold to produce a quantity of one-piece Lock-O-Seals at one time. It is of the so-

(Testimony of Paul F. Smith.)

called transfer pot type of construction and was undoubtedly drawn up for use by a sub-contractor, as we did not use this type of construction in our own plant, where we used the injection type of molding technique. [851]

Q. (By Mr. Fulwider): At that time did you have any plan to acquire molds, transfer molds, such as illustrated in this drawing, Exhibit 64?

A. For our own purpose?

Q. Yes, I mean did you contemplate acquiring equipment of that type?

Mr. Miller: I don't think that is material, your Honor, whether they planned.

The Court: Sustained.

Q. (By Mr. Fulwider): Now, I wonder, can you, from what is shown in this drawing, express how that type of mold operates? Is that drawing sufficient for that purpose? A. Yes.

Q. Perhaps you can just explain to the Court a little bit how that type of mold functions.

A. Well, with this mold, first the metallic insert or one-piece Lock-O-Seal would be placed in to the mold, in the blow-up, in here. The two halves of the mold would be put together. They are on dowels that index them. Then a piece of rubber would be placed in this area, under this pot, or they call it a plunger, into the pot under the plunger. The mold would then be pushed into a rubber press, which has an upper stationary head platen and a lower movable headed platen that is pushed up with a hydraulic ram. You would then turn the valve and

(Testimony of Paul F. Smith.)

the ram [852] would push this platen up until the two of them are squeezing to maybe a hundred or two hundred of tons of pressure on these two parts. That would transfer all the pressure from that ram through the rubber in the pot and forces it down through these little screw holes, with even a smaller screw into the cavity provided in the mold and forming the finished part.

Q. Is that general construction typical of what is known as transfer molds? A. Yes.

The Court: We have no problem here about the molds, do we? We are not interested in the actual molding of these rings.

Mr. Fulwider: We are on the unfair competition count, your Honor. It will become very apparent that it is very material shortly.

The Court: They have done these from time immemorial.

Mr. Fulwider: That is right.

The Court: And you are not claiming any patent as to your making the O rings and you are not claiming any unfair competition in the matter of the O rings, are you?

Mr. Fulwider: We are in the making of the Duo-Seal. This goes directly to the heart of our unfair competition case. In about thirty more minutes it will become really apparent. [853]

The Court: All right. I have interrupted you. I want to ask a question.

Mr. Fulwider: All right.

Q. (By The Court): I notice that all these draw-

(Testimony of Paul F. Smith.)

ings you have been testifying to are marked "obsolete"? A. Yes.

Q. When was the word "absolute" put on the drawings? These are original drawings, I assume, and I note that someone has the word "obsolete" on them.

The Witness: No, your Honor. These are prints of the originals. It has been our policy, when a part becomes obsolete or is changed, to make a print, put it in the obsolete file, and destroy the original so it can't be duplicated and cause us to make the wrong parts. For example, this one here, M 7-10-C, "C" indicates that the first number was 7-10, and "7-10-A" would be the first time it was changed, and 7-10-B was the second.

This (indicating) was the third time this drawing has been changed. Now, when it was obsoleted, I don't believe it is noted. It says it was revised on 7-30-52. When it was revised, it would be obsolete. At this time there are original ones showing we experimented further.

The Court: This word "obsolete" was put on sometime after the original drawing was made?

A. Yes. It might have been used for months.

The Court: And it shows that you are not using these drawings any more at all?

A. No. That is correct.

The Court: What is your present address?

A. 10567 Jefferson Boulevard, Culver City.

The Court: When did you move from 3644 Eastham Drive, Culver City?

(Testimony of Paul F. Smith.)

A. In April of this year.

The Court: Oh, in April of this year?

A. Yes.

The Court: When did you move to 3644 Eastham Drive, Culver City?

A. In September or October, 1951. Our lease there was for five years and was to expire in September or October of this year. That is how I place the date.

The Court: And what was the date of it?

A. September or October of 1951 we moved to the Eastham Avenue address.

The Court: Yes. All right.

Mr. Fulwider: Is that all, your Honor?

The Court: That is all at the present time.

Mr. Fulwider: I have four more prints and I want to get these in before 12:00 o'clock. These are Exhibits 65, 66, 67, and 68.

Q. Will you tell us briefly what each one of those [855] indicate?

A. 65 again is the mold insert drawing showing all details. That is it.

Exhibit 66 is a drawing showing the geometry or external dimensions of the finished one-piece Lock-O-Seal in section.

And Exhibit 67 is another drawing showing the mold dimensions of a $\frac{3}{8}$ inch size one-piece Lock-O-Seal.

And Exhibit 68 is the same, except that it is a half inch one-piece Lock-O-Seal.

Q. (By Mr. Fulwider): Has the Wolfe Com-

(Testimony of Paul F. Smith.)

pany been manufacturing one-piece Lock-O-Seals, or we will call them Series 600, because that applies to both the old name and the new name, has the Wolfe Company been manufacturing Series 600 Seals continuously from the day it first started in 1952 up until today, and including today?

A. Yes.

The Court: Well, when did you first start to manufacture and to put upon the market the Lock-O-Seal that was introduced in this case originally, that is, the present model?

A. The two-piece?

The Court: No.

A. The one-piece?

The Court: The one-piece. Now, all these drawings here are obsolete? [856]

A. Yes.

The Court: Where is your current drawing? Where is your good drawing?

Mr. Fulwider: We didn't bring them in, your Honor. The principal purpose of these drawings is to show, well, for several purposes, but first, to show the date of the development, at least a date in the development.

And additionally, we didn't think it was necessary to the case to give the defendants the benefit of our most current drawings. These drawings are of the vintage and period about which we are complaining.

The Court: I don't care anything about your drawings, if the witness can tell me when you first

(Testimony of Paul F. Smith.)

started the manufacture of your present model?

Mr. Fulwider: I think he has already testified to that, your Honor, as being in 1952.

The Court: Oh, no.

Mr. Fulwider: Because any changes necessary, then, if any, were minor, I believe.

The Court: He started to manufacture these various models in 1952, and for instance, Exhibit 68 is dated 9/26/52.

Mr. Fulwider: May I interject. Each of these drawings doesn't necessarily represent a model put on the market. [857]

The Court: Oh, they were experimenting?

Mr. Fulwider: That is right.

The Court: Trying to find out something. Now, they evidently came to the conclusion that the solution of this problem was the solution as found in Exhibit 22, which shows a flat surface and shows an O ring with, I call it, a lip or it is an extension on which there is a flat surface, and evidently you are now binding the O ring to a metal washer on a flat surface?

The Witness: Take the other exhibit, because that is marked in the lower left-hand corner of the book, that shows one of the original pieces. It is marked in the lower left-hand corner.

The Court: You want to get the 600 Series now?

The Witness: Yes, that is the one.

The Court: Is that the one?

The Witness: This is the one-piece Lock-O-Seal or Series 600.

(Testimony of Paul F. Smith.)

The Court: All right, now, when was that put out? I can't find any date on this sheet.

A. I can't tell positively. It was some of my work and our advertising agency took over sometime in '53, so it was sometime in '52, I would guess.

The Court: Well, now, you didn't go to the Eastham Drive address until October, 1951? [858]

A. Yes.

The Court: So this was done sometime after October, '51?

A. I would guess the latter part of '52, before we put out sales literature. I believe there is an exhibit showing a duplicating machine type of sheet previous to this from which this was drawn. That would still be on Eastham, in '51.

The Court: Well, what I am trying to find out particularly is when you started to make the present Lock-O-Seals in which you vulcanize or cement it to the metal ring on the flat surface, because Mr. Kerley testified when he was on the stand that they started experimentation upon their ring in the early part of '54 and that production did not start until July of '54. Evidently, if this exhibit which is marked and which we have been referring to was out to the trade in '52, you were evidently on the market with a one-piece seal two years before the defendant was. That is what I am trying to get established.

Mr. Fulwider: That is right, I think, your Honor, and we have a witness coming at 2:00 o'clock with

(Testimony of Paul F. Smith.)

some sales records which will pin these dates right down.

The Court: That is what I am trying to find out, because I thought from the evidence that was produced before that the defendants' one-piece seal was on the market before the plaintiffs' and that if there was any copying, [859] it was the copying that the plaintiff did and not the defendant. That is what I thought the evidence was.

Mr. Fulwider: I know, that was the position of Mr. Miller right at the first and it was mentioned to the Court several times. However, it is not the fact.

The Court: Well, according to the exhibits that *haven't* been introduced here and according to the testimony of Mr. Kerley, the plaintiff had its one-piece seal on the market at least two years before the defendants.

Mr. Fulwider: Certainly.

The Court: Do you agree, Mr. Miller?

Mr. Miller: No.

The Court: What?

Mr. Miller: If we can rely on these exhibits.

The Court: What?

Mr. Miller: If we are to rely on these exhibits, but I don't think that establishes that.

The Court: Why can't you rely on these exhibits?

Mr. Miller: They are marked "obsolete" right on the face of them. Apparently it was experimental stuff and it was junked.

(Testimony of Paul F. Smith.)

The Court: But back in 1952 they were experimenting.

Mr. Miller: Yes, and junked.

The Court: And just exactly like you said your people experimented. [860]

Mr. Fulwider: We will be very happy to give Mr. Miller any number of drawings.

Mr. Miller: I would like to see the originals.

Mr. Fulwider: If he would like to look at some current drawings, we would be glad to give them to him.

The Court: Mr. Miller, the particular thing I am interested in at the present time is who was on the market first with the one-piece seal. Was it the plaintiff or was it the defendant? I understood from the opening statement or from the testimony that has been introduced here that the defendant was on the market first and that the plaintiff was the one that stole the idea. And it now appears, if I can rely on this testimony, that the plaintiff was on the market first.

Mr. Miller: Was it on the market? That is the point. We don't know. We never heard of it.

The Court: Well, I don't know.

Mr. Miller: It was a brand new idea to us.

Mr. Fulwider: You mean to state that you never heard of the Stat-O-Seal?

Mr. Miller: I have heard of the Stat-O-Seal, Mr. Fulwider. [861]

The Court: Just a minute. Mr. Miller, we have

(Testimony of Paul F. Smith.)

Exhibit 22, which certainly shows a one-piece seal bound to the seal washer.

Mr. Miller: Yes.

The Court: Now, that exhibit was printed. It was printed after they had moved to the Eastham Avenue location.

Mr. Miller: That's right.

The Court: That means some time in October, 1952.

Mr. Miller: This bears copyright notice, copyright, 1955.

Mr. Fulwider: That is the current sheet, your Honor.

The Court: That may be true.

Mr. Miller: But it was copyrighted in 1955. I don't know.

The Court: I don't know when it was copyrighted.

Mr. Fulwider: Exhibit 15 is the earlier one.

The Court: I beg your pardon?

Mr. Fulwider: Exhibit 15, that page in the notebook, is the earliest printed literature we have been able to find on the one-piece seal. Unfortunately, it doesn't bear a date itself. It has got a paper clip on it, at least it did have.

The Court: This sheet was also printed after they had moved to 3644 Eastham Drive. If you have got anything that can pinpoint the exact time when the one-piece seal was placed [862] on the market, I would like to have it, because so far I have to use deductions.

Mr. Fulwider: We will, your Honor. We have

(Testimony of Paul F. Smith.)

the head of the accounting department who will be here at the beginning of the afternoon session with the necessary records to show the first sales and continuous sales. Then we will peg the date.

* * * * * [863]

Mr. Fulwider: If the court please, I was talking to Mrs. Smith. For your information, I would like to have that page of the one-piece Lock-O-Seal that we were discussing this morning marked 15-A, and then she can put a tag on it and it will be readily findable.

The Court: It may be marked.

(The page referred to was marked as Plaintiffs' Exhibit 15-A.)

[See Book of Exhibits.]

Mr. Fulwider: I would also like to offer in evidence the drawings, 60 through 68, that we discussed just before lunch time.

Mr. Miller: Well, I am going to object to that. They are not properly identified.

The Court: Objection overruled. They may be received in evidence.

The Clerk: Exhibits 60 through 68.

(The exhibits referred to were received in evidence and marked as Plaintiffs' Exhibits 60 to 68.)

[See Book of Exhibits.]

Mr. Fulwider: Your Honor, we have the Franklin C. Wolfe Company accountant here, and with your permission, I would like to put him on out of order. He won't take long.

The Court: All right. [864]

Mr. Fulwider: Take the stand, Mr. Diamond.

JAMES P. DIAMOND

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Fulwider): By whom are you employed, Mr. Diamond?

A. The Franklin C. Wolfe Company.

Q. What is your position with that company?

A. I am the assistant secretary and accountant.

Q. Are you in charge of the accounting department? A. Yes, I am.

Q. That means in charge of all the books and records of the Franklin C. Wolfe Company?

A. Yes.

Q. Have you recently made a search of those books and records for early shipping documents and invoices pertaining to Series 600 seals?

A. Yes, I have. [865]

Q. Did you bring them here with you and turn them over to me? A. Yes, I did.

Mr. Fulwider: I would like these marked for identification, if I may.

The Court: They may be marked for identification.

Mr. Fulwider: One is a group of papers, the top one having the number 7357.

The Clerk: 101 for identification.

(Testimony of James P. Diamond.)

(The document referred to was marked Plaintiffs' Exhibit No. 101 for identification.)

Mr. Fulwider: The second group stapled together, the top paper bearing the number 7318.

The Clerk: 102 for identification.

(The document referred to was marked Plaintiffs' Exhibit No. 102 for identification.)

Mr. Fulwider: Then a single shipping order No. 7356.

The Clerk: 103 for identification.

(The document referred to was marked Plaintiffs' Exhibit No. 103 for identification.)

Mr. Fulwider: And a group of papers clipped, with the top number 7970.

The Clerk: 104 for identification. [866]

(The document referred to was marked Plaintiffs' Exhibit No. 104 for identification.)

Mr. Fulwider: And a single shipping order 8367.

The Clerk: 105 for identification.

(The document referred to was marked Plaintiffs' Exhibit No. 105 for identification.)

Q. (By Mr. Fulwider): Mr. Diamond, I show you here Exhibit 101. Will you identify these various papers and tell the court what they are? First, will you read off the date on the top one and tell us what that is and then work down.

A. This is shipping order No. 7357, dated August 18, 1952. It represents the shipping documents used by our shipping department to forward a delivery shipment to Fletcher Aviation Corporation, 125 pieces of 600 501— $\frac{1}{4}$ Lock-O-Seals.

(Testimony of James P. Diamond.)

Attached to it is a prior shipping order, No. 7256, dated August 8, 1952. It is for 1200 600 501— $\frac{1}{4}$ Lock-O-Seals.

To these two shipping orders are attached a memorandum from the salesman dated August 7, 1952, instructing our order department to write up an order for Fletcher Aviation for the aforesaid numbers of pieces of $\frac{1}{4}$ inch one-piece Lock-O-Seals.

Q. (By Mr. Fulwider): What is the name of the salesman who made that memorandum?

A. The name of the salesman who made this memorandum to the order department is a Mr. R. H. Elem.

To it we have attached also an original purchase order No. 43276 from Fletcher Aviation Corporation for 125 units of 600—501— $\frac{1}{4}$ Lock-O-Seals. Also there is a change order to the purchase order No. 43276, increasing the amount by 120 pieces.

The other papers attached are purchase order notes and special conditions of the original purchase order.

Mr. Miller: I wonder if you would keep your voice up, Mr. Diamond. I can hardly hear you over here.

The Witness: All right. I certainly will.

Q. (By Mr. Fulwider): Will you explain your system—first, I will have you identify the rest of these, referring to Exhibits 102, 103, 104, 105, and having in mind the explanation you gave, Mr. Diamond of No. 101, will you tell the Court briefly what these exhibits indicate?

(Testimony of James P. Diamond.)

A. All right. These exhibits are exactly the same as the prior one. They are shipping orders used by our shipping department to forward merchandise to a customer. They cover four instances of shipments: the first one here dated August 14, 1952, the second one dated August 18, 1952, the Exhibit 104 dated September 24, 1952; and Exhibit 105, [868] dated October 21, 1952.

These particular shipping orders are our copies of a set which is prepared in our order department. Functionally it governs the receipt of the order, instructions to the shipping department to ship to the customer, and after the shipment, the basis for billing on our invoices.

Q. The green on the top is the shipping order?

A. The green on the top is the shipping order governing, governing the shipment.

Q. Are these Exhibits 101 through 105 part of the business records of the Franklin C. Wolfe Company? A. Yes, they are.

Q. Kept in the usual course of business?

A. Yes.

Q. And did you find these in their proper place for records of those dates? A. Yes, I did.

Mr. Fulwider: I offer these in evidence as Exhibits 101 through 105.

The Court: They may be received in evidence.

(Said documents were received in evidence as Plaintiffs' Exhibits Nos. 101, 102, 103, 104, and 105.)

[See Book of Exhibits.]

(Testimony of James P. Diamond.)

Q. (By Mr. Fulwider): Now, referring to Exhibit 78, do you recognize this exhibit, Mr. Diamond?

Mr. Miller: Which is 78? [869]

Mr. Fulwider: That is that summary of sales of Lock-O-Seals and Stat-O-Seals, two pages clipped.

Mr. Miller: All right.

A. Yes. I do recognize them.

Q. (By Mr. Fulwider): Were those figures prepared by you? A. Yes, they were.

Q. And those sheets, the two sheets of Exhibit 78, were they prepared by you?

A. Yes, both of these exhibits were.

Q. And from the books and records of Franklin Wolfe Company? A. That is correct.

Q. Calling your attention to the second page of this two page exhibit, will you read the title on the top of that?

A. The title is "The Franklin C. Wolfe Company, Inc. Sales of Stat-O-Seals Month and Year to August 31, 1956."

Q. Do you recall being requested some time back to prepare such a summary of the sales of Stat-O-Seals? A. Yes, I do remember.

Q. And that is such a summary?

A. That is such a summary of Stat-O-Seals.

Q. Does that properly reflect all of the sales of Series 600 Seals under the name Stat-O-Seal at least insofar [870] as your books are concerned?

A. Yes, it does.

(Testimony of James P. Diamond.)

Mr. Fulwider: May this be marked for identification as our next in order?

The Court: It may be marked.

The Clerk: 106 for identification.

(Said document was marked Plaintiffs' Exhibit No. 106 for identification.)

Q. (By Mr. Fulwider): Now, calling your attention to Exhibit 106, did you prepare the figures on the three sheets or three pages of that exhibit?

A. Yes, I prepared them.

Q. And did you prepare those from the books and records of the Franklin Wolfe Company?

A. Yes, I did. [871]

Q. What do those figures show, Mr. Diamond?

A. These figures show the individual invoice sales of Series 600 Lock-O-Seals from August, 1952 through April of 1953.

Q. And does the Exhibit 106 correctly represent all of the sales of Series 600 seals which were sold under the name One-Piece Lock-O-Seal as reflected by your books? A. Yes, they do.

Mr. Fulwider: I would like to offer Exhibit 106 in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: 106 in evidence.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 106.)

[See Book of Exhibits.]

Mr. Fulwider: I might state for the record we have available in court all the invoices supporting

(Testimony of James P. Diamond.)

these sheets, if Mr. Miller would like to take a look at them at the recess.

Q. Now, Mr. Diamond, did the Franklin C. Wolfe Company use the notation Series 600 to indicate one-piece seals, whether sold under the trademark or name One-Piece Lock-O-Seal or under the trade name or trademark of Stat-O-Seal?

A. The designation now, as I understand your question, was used, the 600 series was used for both the Lock-O-Seal and the Stat-O-Seal.

Q. Is the notation 600 series used for anything else by [872] the Franklin C. Wolfe Company other than a one-piece Stat-O-Seal?

A. Not to my knowledge.

Mr. Fulwider: That's all, your Honor.

Cross Examination

Q. (By Mr. Miller): Referring to this Exhibit 101, I notice that included in there is a white sheet on the stationery of Fletcher Aviation entitled Development. Do you know what that signified?

A. No, I do not.

Q. Do you know whether or not the Wolfe Company began development following receipt of this order?

A. No, I have no knowledge of that.

Q. Do you know when they began to develop the Stat-O-Seal?

A. No, I do not.

Q. You don't have any records on that?

A. Not in my department.

(Testimony of James P. Diamond.)

Q. Do you have a cost accounting system down there?

Mr. Fulwider: Will you speak up a little bit, Mr. Miller. I have difficulty hearing you.

Q. (By Mr. Miller): Do you have a cost accounting system there at Wolfe? [873]

A. Yes, I would say we have a cost accounting system.

Q. Do you have any records there that would show the time or material spent on the development of the Stat-O-Seal?

A. Not available to me. I don't have any records.

Q. Who would have them?

A. I do not know.

Q. Would anybody else down there have them besides you? A. I don't think so.

Q. This second sheet down here has the notation Experimental. Do you know anything about that?

A. No, I do not.

Q. Was the Stat-O-Seal designated by the number Series 600 or the number 600?

A. From May of 1953 on the Stat-O-Seal designation was given to the 600 series.

The Court: What is that date?

The Witness: May, 1953.

The Court: What was the designation that it had before May, 1953?

The Witness: The 600 series was carrying the designation Lock-O-Seal prior to May, 1953.

(Testimony of James P. Diamond.)

Q. (By Mr. Miller): Now, was the 600 series always made the same way?

A. I have no knowledge of manufacturing processes. [874]

Q. You never saw the 600 series, did you, investigate it? A. I have seen the product.

Q. Would you be able to identify it?

A. Yes, I would.

Q. Can you read drawings?

A. I am not a qualified draftsman or engineer.

Mr. Fulwider: I object, your Honor. I don't see anything proper in this.

The Court: The only purpose of this witness was to establish certain dates. They didn't go into mechanical contrivances, relative to the way the seals were made.

Mr. Miller: If a so-called 600——

The Court: All right. It is 600. He has given you the information as to what the 600 means. I will sustain the objection.

Q. (By Mr. Miller): Did the 600 series always have the same appearance?

A. That I couldn't answer. I don't know.

Q. It might have been the same as it is today or different in 1952. A. It could have been.

The Court: He says he doesn't know. He is a bookkeeper. He is not an engineer or designer.

Mr. Miller: I just want to know what he really knows. [875]

The Court: The only purpose of his coming in here is to establish when the seals were sold, and

(Testimony of James P. Diamond.)

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Q. Was the Stat-O-Seal designated by the number Series 600 or the number 600?

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The Court: What is that date?

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The Court: All right. It is 600. He has given you the information as to what the 600 means. I will sustain the objection.

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Q. It might have been the same as it is today or different in 1952. A. It could have been.

The Court: He says he doesn't know. He is a bookkeeper. He is not an engineer or designer.

Mr. Miller: I just want to know what he really knows. [875]

The Court: The only purpose of his coming in here is to establish when the seals were sold, and

he has brought in evidence to show that the first sale was made in August, 1952.

Mr. Miller: Very well. That's all.

* * * * *

PAUL F. SMITH

the witness on the stand at the time of the recess, having been heretofore duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Fulwider): Mr. Smith, did you bring with you or rather did you give to me just prior to coming back to court a Stat-O-Seal made currently from which you had cut away a portion of the rubber? A. Yes.

Mr. Fulwider: Will you put a tag on this, Mrs. Smith?

The Clerk: 107 for identification. [876]

(The exhibit referred to was marked Plaintiffs' Exhibit No. 107 for identification.)

Q. (By Mr. Fulwider): I hand you Exhibit 107. Is that the Stat-O-Seal you just mentioned?

A. Yes.

Q. Is that one of the Stat-O-Seals being currently manufactured by Franklin C. Wolfe Company?

A. In part. It is one from which I took out about half the rubber to disclose the design of the washer, as well as the finished configuration in one part.

Q. Other than the rubber that you cut away, it represents today the Stat-O-Seal? A. Yes.

Q. I wonder if you would explain to the court

(Testimony of Paul F. Smith.)

the construction of the metal washer in Exhibit 107 and briefly how it is formed that way.

A. The metal washer is formed in large stamping dies having a number of stages. The first punches out the center section. Then it punches the splines into that section, and then a coining die comes down and flattens the two sides out, so that as they are flattened, the metal wants to travel in four directions and it is restrained from traveling outward, so it travels inward and sideways to form small orifices. By forming the orifices, with the formed orifices we can inject rubber into a mold that contains the retainer. The rubber [877] will flow through the orifices, making a mechanical joint so that the sealing ring section becomes an integral part of the retainer, making a one-piece Lock-O-Seal or, as it is now called, a Stat-O-Seal, without the aid of bonding or gluing.

Q. By bonding you mean some type of cement, or just what do you mean?

A. Bonding is generally referred to as the joining of materials under heat and pressure. Gluing is merely a mechanical attachment of the two elements.

The Clerk: 108 for identification.

(The exhibit referred to was marked as Plaintiffs' Exhibit No. 108 for identification.)

Mr. Fulwider: I have had marked as Exhibit 108 a Franklin C. Wolfe drawing No. 607-9-XX-1/4, dated 4/16/52. [878]

The Court: I understand there is a patent pend-

(Testimony of Paul F. Smith.)

ing for this particular way of attaching the rubber seal to the metal washer, is that right?

A. I believe that is right, sir.

Q. (By Mr. Fulwider): Now, can you tell me whether or not the washer, Exhibit 107, is made substantially in accordance with the drawing 108 which carries the date 4/16/52, I believe?

A. Yes. It is a different size, but substantially the same design.

Q. No essential difference so far as you can tell in examination of Exhibits 107 and 108?

A. No, sir.

Q. In the design or method of manufacture?

A. No.

Mr. Fulwider: I would like to offer Exhibits 107 and 108 in evidence.

The Court: They may be received in evidence.

The Clerk: 107 and 108.

(Said exhibits were received in evidence as Plaintiffs' Exhibits Nos. 107 and 108.)

[See 108 in Book of Exhibits.]

Q. (By Mr. Fulwider): Mr. Smith, do you recall a conference had in your office at the Wolfe Company with Mr. Kerley and Mr. Grass concerning the possible manufacture by Rubber Teck of the one-piece Lock-O-Seals, or what we will [879] call the Series 600 Seals? A. Yes.

Q. Can you tell me approximatley when that conference was had?

A. The latter part, near the end of '52, I believe.

(Testimony of Paul F. Smith.)

Q. Who was present or was anyone present besides Mr. Kerley and Mr. Grass that you recall?

A. Myself and I believe—did you say Mr. Karres?

Q. No. I only mentioned Kerley and Grass.

A. I believe Mr. Karres came and was in the room a couple of times briefly and was talking to Col. Wolfe in his office most of the time.

Q. And can you tell me the occasion for that conference if you remember?

A. Yes. We had reached certain stage in the development of the one-piece seal at the point where we had to be concerned with manufacturing facilities. It had always been our policy that we wanted to design and engineer but we didn't want to own a big factory, and we had a very accommodating and desirable subcontractor in Rubber Teck Company, so it was a natural thing for me to contact them and ask them to come down for an unusually formal discussion of the problem. So they came down, and I told them as we saw it, then, the one-piece seal had desirable features that would cut into the sales of the [880] two-piece Lock-O-Seal over a period of time, and that we certainly wanted them to have the opportunity to make the two-piece seals to take the place of the loss of volume—I mean make the one-piece to replace the loss of volume on the two-piece, and took them through the plant and showed them what we had accomplished in our small way at that point, showed them some of the tooling and how we were approaching the problem, some of the

(Testimony of Paul F. Smith.)

headaches that we had had, and some that we didn't have all the answers to as yet, and suggested that to get proper pricing and to take out some of the hazards when you make a volume of items, some of which are very unpopular and unprofitable, that we were willing to take on the manufacture of those orders for more profitable items, things they had to have rather than on profitable items, and thought they should bid on or at least give us a figure on manufacturing several of the very popular items. We were to make the formed washer and supply it to them so that they could mold the rubber to the washer, and they were, I believe, to trim and return it to us for inspection, and it then would be ready for identification marking and shipping.

Q. Do you recall whether you discussed with Mr. Kerley and Grass at that conference any drawings or showed them any drawings concerning the Lock-O-Seals, the one-piece Lock-O-Seals and the molds or the molds that could be used [881] with those one-piece seals?

A. Yes, we went through several sizes of the drawings of the metal insert and the finished product and the various methods of making the molds so that they would compensate for the thickness variation of the retainers; although they had seen the product, they didn't know what the exact dimensions and tolerances were and what production difficulties they might encounter. So I told them everything I could to help them properly evaluate and estimate the cost to do the job because we not only

(Testimony of Paul F. Smith.)

wanted the subcontractor to manufacture them, we wanted one that would come in with his eyes wide open and would make a profit, so we could keep him.

Q. Did you show them any of the one-piece seals that you had on hand, then?

A. Yes, both the retainers and some of the parts that had rubber in already. Of course, we also saw some of them out in the plant where they were being produced in limited quantities.

Q. Did you suggest that you would supply the rubber to them for them to use in molding around the washers that you would also supply to them? Do you recall anything along that line?

A. I don't believe we did.

Mr. Miller: May I have that question? [882]

(Question and answer read.)

Q. (By Mr. Fulwider): Do you remember whether or not you discussed curing of the rubber?

A. Yes.

Q. Problems of temperature, and so forth, at times? A. Yes.

Q. And did you have any conversation concerning any particular method of tumbling?

A. Yes. We showed them some very crude experimental equipment we had developed to develop the little minute flash off of these parts by the use of abrasive and liquid carbon dioxide at approximately 100 degrees below zero, which was the practical method of developing them and making them in mass production, at low costs.

(Testimony of Paul F. Smith.)

Q. I am not sure whether you said this yet or not: do you remember asking them to give you a bid or an estimate on manufacturing of the Stat-O-Seal or what we have called the Series 600 Lock-O-Seal, at this conference?

A. Yes, I asked them to. I believe on the three popular sizes, I asked them to give us a figure on making those, we furnishing the washer and they were to trim them and complete them, they furnishing their own rubber, they had to furnish and amortize their own molds, which had been our practice with Lock-O-Seals.

Q. Do you remember whether or not you gave them any [883] one of these drawings that you discussed with them to take with them in working out an estimate for you?

A. Yes. I gave them several drawings.

Q. I show you these drawings we were discussing this morning, Exhibits 60 through 68. Are these exhibits typical of the type drawings, at least some of which you gave Mr. Kerley and Mr. Grass or one of them, to take with them, at the close of that conference?

Mr. Miller: I object to the question as being indefinite. Typical of what was given?

The Court: I will sustain the objection.

Do you know whether or not these drawings were given to the defendants?

A. These particular drawings, I cannot say, sir.

Q. Among the drawings that you gave to the de-

(Testimony of Paul F. Smith.)

endants, were there any drawings showing the product itself, that is, the Stat-O-Seal?

A. Yes.

Q. Or Lock-O-Seal?

A. A completely finished part?

Q. Yes. A. Yes.

Q. Did any of those drawings show molds or portions of molds for making the one-piece Lock-O-Seal?

A. Other drawings given to the defendants did, not the one that showed the finished product.

Q. I mean other drawings give that data?

A. Yes.

Q. So among those drawings which Mr. Kerley and Mr. Grass took with them were drawings showing the one-piece seals and drawings concerning the molding of those one-piece seals?

A. I don't remember which one took them, but the ones that were available, one of them took with him, yes.

Q. Go ahead. I didn't mean to interrupt you.

A. That's it.

Q. It was either Mr. Kerley or Mr. Grass?

A. Yes.

Q. Do you remember whether you ever got those drawings [885] back?

A. I don't believe so.

Q. Did you ever get an estimate from Rubber Teck in response to the request you made at this conference we have been discussing? A. Yes.

Q. Do you remember what it was?

(Testimony of Paul F. Smith.)

A. During a telephone conversation on another subject with Mr. Kerley, he said, "Yes, I can make them for about 5¼ cents apiece."

As that was nearly twice the price we were charging for the complete part, I thought he was being facetious and tried to get him to be serious about it, but that was as far as he would commit himself. That was the only quotation I ever received on their production.

Q. At this conference that we have been discussing, did you have any hesitancy in giving all this information to Mr. Kerley and Mr. Grass?

A. There was no occasion to in our relationship at that time.

Q. Why?

A. We just didn't think of secrets between each other. We certainly didn't consider them a competitor or a potential competitor.

Q. Did you tell Mr. Kerley or Mr. Grass to hold these [886] documents in confidence and not show them to anybody? A. No, sir.

Q. Why?

A. There was no occasion for it to occur to me, that it might even be necessary.

Q. Did you assume that they would hold this material in confidence?

A. I don't know that I assumed it. I would never think of it.

Q. Your relationship with them was such that it was a natural result that they would?

A. At the time we were by far the largest custo-

(Testimony of Paul F. Smith.)

mer, we believed, that they had, and we didn't think anybody would cut their customer's throat. It never occurred to me.

Q. Turning to the Duo-Seal manufactured by Rubber Teck, do you recall when you first heard of Duo-Seal? A. No.

Q. I will ask it this way. Did you ever hear of the Duo-Seal before it came on the market?

A. The first it came to my attention, I was shown one.

Q. By whom and about when?

A. Some time in 1954, by either one of two people, I don't know which, they were both half way in the room, and I don't know which showed it to me, either Mr. Hagmann or Mr. McFarland. They told me where they got it and all the [887] circumstances.

Q. Did Mr. Grass at any time prior to your first seeing this Duo-Seal that you just mentioned show you a Duo-Seal or a one-piece seal manufactured like the Duo-Seal? A. No.

Q. Did anyone else at Rubber Teck show you such a seal?

A. That was the first version I had ever seen, was in 1954, when it was brought to me.

Q. At the time that you saw this first Duo-Seal that Mr. Hagmann or Mr. McFarland brought into your office, was the Wolfe Company still buying its entire requirements of rubber rings for Lock-O-Seals from the Rubber Teck Company?

A. Yes, sir.

(Testimony of Paul F. Smith.)

Q. Are you generally familiar with the Duo-Seal?

A. I have examined them from time to time since I first saw them.

Q. In your opinion, Mr. Smith, are any of the ideas or techniques which you discussed with Mr. Kerley and Mr. Grass at that conference in your office that we have been discussing, used in the manufacture of Duo-Seals, as you know them on the market now?

Mr. Miller: Object to that as calling for a conclusion.

The Court: Sustained.

Mr. Fulwider: I think, your Honor—— [888]

The Court: I don't think this witness is qualified to testify.

Mr. Fulwider: He is an expert in this business.

The Court: I will sustain the objection.

Q. (By Mr. Fulwider): Do you have an opinion from your knowledge of the Duo-Seals as to whether or not they have been manufactured, probably manufactured, using a mold having a floating cylinder in it?

Mr. Miller: Same objection.

The Court: Same ruling.

Q. (By Mr. Fulwider): Now, calling your attention to Exhibit 30, which bears the heading, Headquarters Air Development Force, Wright-Patterson Air Force Base, 19 June, 1951, do you recall this document, and if so can you tell us what it is?

(Testimony of Paul F. Smith.)

Mr. Miller: Let me see the document. It is pretty hard to remember these by number.

(Witness handing document to Mr. Miller.)

Q. (By Mr. Fulwider): Can you tell me what Exhibit 30?

A. It is a copy of a military Wright Field Air Force Base document discussing the tests and qualifications of rubber compound RT-1007 to meet a fuel military specification as submitted by the Wolfe Company for qualification.

Q. Does that document itself amount to an approval?

Mr. Miller: Objected to as calling for a conclusion. [889]

The Witness: It is an approval.

Q. (By Mr. Fulwider): It is an approval?

Mr. Miller: Is it an approval?

Mr. Fulwider: It speaks for itself.

The Court: Again I want to call attention to the fact that we are not concerned here with the quality of the rubber used in the rubber seal.

Mr. Fulwider: Except I think it is relevant and material, your Honor, as to whether or not——

The Court: There is absolutely no evidence here so far that the defendants are using the same kind of rubber in their seal as the plaintiff is, and it is too late to go into this question. You are going to finish up your case this afternoon.

Mr. Fulwider: I don't want to go into the composition. I merely want to show this fact, as has been stated here earlier in the testimony, the Frank-

(Testimony of Paul F. Smith.)

lin C. Wolfe Company did have Wright Field approval, and it is material——

The Court: That is in the evidence, isn't it?

Mr. Fulwider: We have discussed the fact, and this is the document that proves it.

The Court: Isn't that in evidence?

Mr. Fulwider: No, it isn't. I offer it in evidence at this time.

The Court: It may be received in evidence. [890]

The Clerk: Exhibit 30.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 30.)

[See Book of Exhibits.]

Mr. Fulwider: That's all the questions we have, your Honor.

The Court: This last exhibit that was introduced in evidence is dated June, 1951 and it says Evaluation of Tests of Fuel O Rings Manufactured From C. F. Wolfe. The fact of the matter is you didn't manufacture these O rings in 1951; they were manufactured by Rubber Teck, weren't they, and they turned them over to you and you sent them in?

The Witness: The particular ones that were submitted with that report, your Honor, I believe were made by a company called Harbor Rubber.

The Court: You didn't manufacture them, though?

The Witness: We didn't manufacture them, no.

The Court: So you just got the ring somewhere else and sent it in for approval?

(Testimony of Paul F. Smith.)

The Witness: After we developed a compound to get the approval. It was necessary to our sale of Lock-O-Seals that we have the compound approved so they would buy the Lock-O-Seals.

Mr. Fulwider: We had a responsibility, I might inject, your Honor——

The Court: This says it is fuel O rings manufactured [891] from F. C. Wolfe Company. Of course, it doesn't say by F. C. Wolfe Company. I don't know whether it is by or from, but the fact of the matter is somebody else made the ring and you sent it in for evaluation.

The Witness: That is correct.

The Court: All right. [892]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Miller): Now, this mold that you say you submitted the drawings of to Mr. Kerley and to Mr. Grass, was that for making Stat-O-Seals or the forerunner of the Stat-O-Seal?

A. There were several molds, not one, discussed and drawn.

Q. Did you show the drawings for several molds?

A. I showed the drawings and sketches of several approaches to the problem. [893]

Q. (By Mr. Miller): Well, were any of those drawings or sketches these exhibits——

A. I still have them.

Q. ——60 through 68?

A. I can't say that they are the same, no.

(Testimony of Paul F. Smith.)

Q. You couldn't say that there is a single one of these drawings that were shown by Mr. Kerley or to Mr. Grass or to Mr. Karres?

A. Positively, no.

Q. Do you have other drawings besides these of the molds for the Stat-O-Seal?

A. Yes, we have other molds, drawings of those, yes.

Q. Do you have them that were in existence in 1952?

A. I can only assume we did. We had additional sizes. We must have had.

Q. Well, do these exhibits represent all the drawings pertaining to Stat-O-Seals that you had in 1952?

A. I don't know; I didn't conduct the search for them.

Q. Do you know whether these exhibits represent all the drawings that you had for the molds or the Stat-O-Seal in '53?

A. I am sure they don't.

Q. They might be some other drawings that you say that you showed to Mr. Kerley or to Mr. Grass or to Mr. [894] Karres? A. Yes.

Q. Now, do you recall exactly what those drawings show that you showed to Mr. Karres or to Mr. Kerley or to Mr. Grass?

A. Not exactly; I recall in general the items discussed and the types of drawings that were brought out.

Q. And what were these items?

(Testimony of Paul F. Smith.)

A. They were drawings of the details of the washer that was to be supplied, showing its dimensions and tolerances, drawings of the cross section of the finished rubber part that would be used in inspection; drawings of the individual inserts that go up to make a multiple cavity mold, drawings of several methods of making a mold so that the upper insert or the lower insert was free to float, so that if the metal retainer was thicker or thinner, that it would compensate for that and the mold cavity would stop on the insert and not allow a heavy flash of rubber between the insert and the mold that would be hard to take off, and affect the volume or the shape of the rubber.

Q. Now, what of these things that you showed to Mr. Kerley or Mr. Grass or Mr. Karres is now incorporated in the accused Duo-Seal?

A. I haven't the slightest idea, sir.

Q. Do you know if there is anything that you showed [895] them that is now incorporated in the Duo-Seal?

A. Only by engineering logic, that with four or five types of molds, we discussed, they would in some part at least encompass any possible method of accomplishing the compensating feature that Mr. Grass has mentioned repeatedly. It must have been covered in the discussion. Which one of the types they use, I haven't the slightest idea.

Q. You will agree that the metal retainer in the Duo-Seal is different from the metal retainer that you showed them in the Stat-O-Seal?

A. Yes.

(Testimony of Paul F. Smith.)

Q. Do you agree that the shape of the finished rubber in the Duo-Seal is any different from what is in the Stat-O-Seal?

A. Not exactly. In some of the first exhibits or the first specimen of the Duo-Seal I saw, it was almost identical, to the eye at least, with this other one-piece Lock-O-Seal.

Later versions seem to be different. Later versions of the Stat-O-Seal may have been different also.

Q. Were the Stat-O-Seals changed?

A. Within certain tolerances. There are certain characteristics that are—say improvements as you go along. Whether they are of any magnitude or would even show on a [896] drawing, I can't say. They probably wouldn't show up.

Q. Now, the first Duo-Seals that you saw, you saw when?

A. Mr. Hagmann or Mr. McFarland brought them in and about sometime in 1954, I believe.

Q. Now, with respect to this mold, how does the mold float, with springs or what?

A. Of the several methods discussed in sketch, one method is called the Bellville Spring, which is a cup shaped relatively thick piece of spring steel with a hole in the middle that will carry tremendous loads, and the cover over the very short ends will spring, in other words, 5/1000, 10/1000 of an inch, without a permanent set and recover. It is called a Bellville Spring.

(Testimony of Paul F. Smith.)

Q. Did you explain that to Mr. Kerley or to Mr. Grass?

A. Yes, and I am reasonably certain showed him drawings we had of that design.

Q. Well, do you have any drawings with you that would show that?

A. I have some drawings showing the Bellville Spring that are old, undated, that were brought here, brought to me this morning by the inventor of the Stat-O-Seal from his home, from his personal files. There are no dates on them. [897]

Q. Well, how much of this information that you conveyed to Mr. Kerley and Mr. Grass and Mr. Kares was a matter of common knowledge?

A. That I can't answer. I can only answer that it was new, new to me and to everyone in our organization, and that neither Mr. Grass nor Mr. Kerley made any statements to the effect that they knew of that type of design previously.

Q. Well, was the shape of the retainer in the Stat-O-Seal a matter of common knowledge?

A. Yes, we had been producing it for six months, maybe a year, experimentally and playing with it for some time, and I can't recall specifically showing it to them, but I am sure they saw them previously, yes.

Q. And other people in the industry had seen them, too, and they were matters of common knowledge, is that correct?

A. At the time of this conference, yes, other people had seen them.

(Testimony of Paul F. Smith.)

Q. And as to the shape of the rubber, that was likewise a matter of common knowledge?

A. Yes.

Q. And as to the floating construction of the mold, with the Bellville Spring, either with or without the Bellville Spring, or whatever you showed them, that was a [898] matter of common knowledge, too?

A. Not to my knowledge. There were 1, 2, 3, 4, 5, five different designs discussed only of which I would consider to be of common knowledge, to my knowledge.

Q. And which was that?

A. That was the plain mold where you had a pressed-in insert and no compensating means whatever, an old part.

Q. What were the other four?

Well, there would be three more besides the Bellville Spring that you discussed with them at that time.

A. One is one where a piece of rubber having a recess at one end is placed below the piston and the resistance of the rubber gives you a compensating floating to the piston to reduce the flash, not very successfully.

Another one was a floating type of piston where the injection or transfer pot presses on the rubber itself, exerted pressure on the entire area of the piston, driving it firmly down against the retainer, and as the area of the piston is considerably greater

(Testimony of Paul F. Smith.)

than the area of the retainer, it exerts enough pressure to prevent flash.

The other one, that I am vague on, as to whether we discussed it with them or not, is a three-piece type in which you have the larger area piston to reduce the flash and a smaller piston inside of that piston that floats down and kisses the lower part at the center so that you [899] have a compensating means both over the upper and lower half of the center portion of the mold, that meet, and the upper flexible piston or floating piston on the outer diameter that meet the retainer is also free to float and both are energized by the pressure of the rubber in the pot or the injector. [900]

* * * * *

The Court: I am going to ask you to cut down your cross examination as much as possible. I don't think we have any interest in these molds at the present time or how they work because there is no question here, so far as I know, about any infringement of molds. They don't claim to have any patents upon the molds.

Mr. Miller: Or did they? I understood just before noon, your Honor, and it took me by surprise, Mr. Fulwider said the molds were the crux of the trade secret stealing.

The Court: It isn't what Mr. Fulwider says that is important. It is what I think that is important. I don't think the molds have anything to do with this case at all.

Mr. Miller: Then I have to reorganize my line

(Testimony of Paul F. Smith.)

of [901] thinking. Maybe I can clear up this mold matter.

The Court: The only testimony is that he says he gave certain molds or gave drawings for certain molds to the defendants. That is as far as I am concerned with them. I don't care what kind of molds they were. He says there were five different kinds. I don't care how they operated. The only question I am interested in here is whether or not the defendants' device is a copy of the plaintiffs' device, whether it uses the same principle.

Mr. Miller: When we talk about the plaintiffs' device, there are two aspects of it, apparently, because we will take care of ourselves on the patent, but here is the matter of the Stat-O-Seal brought in here and I objected to it being brought in but your Honor permitted it to be brought in, and now they are contending there is some similarity between the defendants' device and the Stat-O-Seal.

The Court: I am only interested in the similarity between the one-piece seals, that is the plaintiffs' one-piece seal and the defendants' one-piece seal.

I think there is sufficient evidence before the court now for the court to decide whether they are or are not similar. I think I am just as capable of looking at the two seals and deciding whether or not one is *the* like the other as any expert that comes along. It is very apparent in my opinion what has been done. [902]

Of course, I haven't got a cut-away seal of yours.

(Testimony of Paul F. Smith.)

I would like to have you bring in one of yours that is cut-away like this one.

Mr. Miller: I have one here, your Honor, but it isn't of comparable size.

The Court: I would like to see how this is fused on or cemented on to the metal.

Mr. Miller: I don't think that this exhibit will show you. I will show you what I have got. Then if that isn't sufficient, it will be our night work to get another.

The Court: Supposing you get me a large seal. Do you make seals as large as this exhibit?

Mr. Miller: I don't know whether we make them that large. Let me show you our seal. Here is what I have, so you know what it is. It is cut in half.

The Court: That's all right. This is satisfactory when the time comes. I think I am perfectly capable of taking a look at these two seals and deciding whether or not one copies the other. I don't care how they are made. I don't care what kind of mold was used.

Mr. Miller: As long as I supplied that half section to you, I think it should be marked in evidence.

The Court: Let's have it marked for identification as the defendants' exhibit and at the proper time you can offer it in evidence. [903]

Mr. Fulwider: Is that half a seal cut right down the middle?

Mr. Miller: Yes. Let's see if I can find the other

(Testimony of Paul F. Smith.)

half. Mr. Karres says he will try to bring a large one tomorrow.

The Clerk: Do you want this marked or the one tomorrow?

The Court: Evidently they don't know whether they want it marked or not, so you keep it until they decide.

The Clerk: I will give it to Mr. Miller. I don't want to keep it.

Mr. Miller: Just for the record, I would like for your Honor to allow me to indulge in one more question on the molds.

Q. Mr. Smith, in the course of the taking of your deposition, do you recall testifying as follows at page 140, line 19:

“Q. Did they”—referring to the Rubber Teck people—“ever make up a mold for making one-piece Lock-O-Seals for you?”

“A. I can't recall that they did, although they may have, because our facilities for making molds was limited at this period. It would have been a natural thing for them to have done if we asked.

“Q. Well, do you have any recollection of having [904] asked them or their having made up a mold?”

“A. No, I haven't.

“Q. Now, have you told us everything that is directly or indirectly embodied in the Duo-Seals made by the defendants which are the trade secrets?

“A. Everything I can recall at this moment.”

Did you so testify? A. Yes.

Q. These Exhibits 60 to 80, do they show the use

(Testimony of Paul F. Smith.)

of a notched ring, retainer ring, such as the one that you had here that cut away the rubber, Exhibit 107?

A. Which one of these?

Q. Do any of those show the retainer ring having notches or openings in the inner wall of the ring?

A. Not at the section shown in the drawing. It doesn't show a notch, no.

Q. Do any of those exhibits show that?

A. None of these drawings pertain to the metal portion of the retainer or even show the outside dimensions. They are of the mold or of the rubber section itself. They would not show any detail of the metal retainer.

Q. Why did those drawings become obsolete?

A. Basically, our method of marking, if we make a new mold drawing or a new part drawing or, frequently when a part has been determined to be a standard catalog item, we then [905] frequently reduce all the individual pages to one charted page, the chart showing all the pertinent data, such as is done in the two-piece Lock-O-Seal in, I believe it is Exhibit 1, and at that time we mark the original vellum as obsolete, and make a print for our file and destroy the vellums.

Q. That is your practice, but I want to know what was the circumstance that caused this set of drawings to become obsolete.

A. I only assume it was reduced to the chart. I am not sure.

Q. What, if any, are the trade secrets or confi-

(Testimony of Paul F. Smith.)

dential information that is incorporated in the Duo-Seal that is taken from the Stat-O-Seal?

A. I am not sure I know what a trade secret is. I don't know how I could judge.

Q. What is there about the Duo-Seal that has been copied from the Stat-O-Seal?

A. The general appearance is quite similar, specifically usage, the end use is similar.

Q. You don't know what usage the Duo-Seal is to be put to by the buyer, do you?

A. Yes. When we are bidding on an order to a specific company and we lose it to a Duo-Seal, we are pretty sure they used it for the same purpose they were going to use ours.

The catalog date in its original state is so similar [906] it looks like it was almost a photostat. I don't know if that is a trade secret. I am not qualified.

Q. The buyer, after he buys it, can use it for any purpose he wants to.

A. If he doesn't use it for a fastener sealing, I guess we wouldn't be interested.

Q. Are there any other items of the Stat-O-Seal that are copied in the Duo-Seal?

A. I don't think the Stat-O-Seal copies the Duo-Seal in any manner.

Q. I say that are copied in the Duo-Seal.

A. I think you worded it the other way, or I misunderstood you.

Q. The rubber is different, is it?

A. Can we get a fresh start? There are too many questions at once here.

(Testimony of Paul F. Smith.)

Q. The rubber is different?

A. I didn't say that.

The Court: Mr. Miller, I think he didn't understand one of your previous questions about what was copied from one seal to the other. I think he understood the reverse of what you asked. Maybe you better go back and ask it again.

Mr. Miller: Maybe I misspoke myself. I don't know.

The Court: Maybe you did. [907]

Q. (By Mr. Miller): I wish you would give me all the items that are in the Stat-O-Seal that are copied in the Duo-Seal.

A. Outside of similarity of purpose and similarity of appearance, as far as the physical product goes, there is a very definite similarity of dimensioning and similarity of the color identification coating.

There is a similarity in that the same government specification are applied to the rubber used in them.

I don't know if there is a similarity in all the metals, although some of them, I feel sure are the same as ours.

The Court: You didn't have a trade secret on the quality of the metal, did you?

The Witness: Not a secret, no, sir. He said similarity.

The Court: You didn't have a trade secret as to the chemical composition of the rubber that was used?

(Testimony of Paul F. Smith.)

The Witness: Your Honor, he asked me similarity this time. That is what I was trying to answer.

The Court: I know, but he is trying to find out what trade secrets you are claiming. What is the trade secret?

The Witness: I don't know.

The Court: You testified here that you were the general manager. [908]

The Witness: Correct.

The Court: Of the Wolfe Company, and you brought this case here claiming there was some trade secrets taken. What were the trade secrets? You are the general manager. You ought to know.

The Witness: I believe he narrowed his question.

The Court: I am asking you.

The Witness: Broadly?

The Court: What trade secrets do you say have been taken by the defendants?

The Witness: Going to the first, I would say that they had knowledge of all our customers.

The Court: I am talking about the seal itself now. In the two seals that are manufactured, one manufactured by the defendants and one manufactured by the plaintiffs, what trade secrets do you say that the defendants in the manufacture of their seal took from the plaintiff?

The Witness: Trade secret? I am afraid I can't answer, because I don't know actually what a trade secret is in the law.

The Court: If you can't answer, that is all that is necessary.

(Testimony of Paul F. Smith.)

Mr. Fulwider: I think, perhaps, would your Honor assist the witness——

The Court: Just a minute. I asked what the trade [909] secret was. Mr. Miller has been holler-ing ever since this case was filed about what the trade secrets are. You get the general manager on the stand at the time of trial and he says, “I don’t know what a trade secret is.”

Mr. Fulwider: Knowing the witness as I do, I know that he is being very meticulous in his answer.

The Court: I have put the question here. Mr. Miller didn’t put the question. I put the question and it wasn’t a trick question either. [910]

Mr. Fulwider: Well, I think if you would add to it, without legal difficulty——

The Court: No. I will ask him. I don’t want you in any way at all to indicate to the witness as to whether his answer is good, bad or indifferent. You let the witness take care of himself.

Mr. Fulwider: I am trying to.

The Court: All right, Mr. Miller, go ahead.

Q. (By Mr. Miller): This color coat is imposed by the Air Force?

A. It was imposed upon us, to put red color coating on our parts, yes, for specific usage in fuel.

Q. Are you acquainted with the so-called Dyna-Seal? A. I have seen them, yes.

Mr. Fulwider: I object. There has been nothing said about Dyna-Seals on the direct.

The Court: I sustain the objection. I have got

(Testimony of Paul F. Smith.)

to hold you down to cross examination of what this witness testified to.

Q. (By Mr. Miller): What was the date of this conference that you say that you had with Mr. Karres and Mr. Grass and Mr. Kerley with relation to that first sale of a Stat-O-Seal to Fletcher?

A. I don't know the date of any Fletcher sale specifically. [911]

Mr. Fulwider: Would you read that question?

The Court: May I say to the witness that the shipping order shows that there was sold to Fletcher in August, '52, some of these one-piece seals, and now in reference to that date of August, 1952, when was the conference that you talked about? You said in the latter part of '52.

A. I would say in the latter part of November, 1952.

Q. (By Mr. Miller): Was that the time you first disclosed Stat-O-Seals to the defendants?

A. I can't be sure of that; I don't recall personally discussing it with them prior to that.

Q. There was some statement about the fact that the Stat-O-Seals were withheld from the market to work out some problems. How long were they withheld from the market to work out these problems?

A. I don't recall.

Q. I couldn't hear you.

A. I don't recall.

Q. And do you recall what the problems were?

A. Not specifically. Our primary problem was making the complicated retainer. Whether that was

(Testimony of Paul F. Smith.)

the specific problem that delayed putting them on the market, I can't be sure.

Q. Do you recall why Rubber Teck turned down your proposal to make up the molds and to make the Stat-O-Seals? [912]

The Court: Wait a minute, Mr. Miller. You are assuming something. You are assuming something that is not in the record, and this witness didn't say it was turned down. He said they got the offer and the offer was too high. He said it was for five and a quarter cents apiece, and that was twice as much as he was getting for the seals. Now, the evidence isn't that he turned it down. They may have turned it down for asking too much money. But you are using words that this witness did not use.

Mr. Miller: Well, we have two different stories. Maybe I am assuming something. Thank you.

Q. Was the price the sole reason why you did not engage Rubber Teck to make up the molds and make the Stat-O-Seals? A. Yes.

Q. They didn't refuse? You just thought the price was too high?

A. The ridiculousness of the price indicated that they did not want to make them and we wouldn't beg them.

Q. Otherwise, at that time, relations were pretty good between the two companies? A. Yes.

Mr. Miller: That is all. [913] ..

* * * * *

FOSTER HAGMANN

resumed the witness stand on behalf of the plaintiffs, having been previously duly sworn, and testified further as follows:

Direct Examination

Q. (By Mr. Fulwider): Mr. Hagmann, did you know of a bid or an estimate that Rubber Teck made for the manufacture of Stat-O-Seals?

A. Yes.

Q. That Mr. Smith mentioned here as having received? A. Yes, I did.

Q. Can you tell me approximately when that was made, to your best recollection?

A. Well, my best recollection is sometime in the latter part of '54.

Q. Now, wait a minute. A. Oh——

Q. '54? Will you read the question again? [914]
(Pending question read.)

A. Oh, I am sorry. Sometime in the latter part of 1952. Shortly after we had been selling them.

Q. Was that estimate transmitted to you or was an estimate transmitted to you by Rubber Teck?

A. I don't recall whether it was or not. The only reason that I think I remember is that the price was too high. It was not a practical price for us, so it would be, I think, about——

Q. Does the Wolfe Company make other products besides Lock-O-Seals and Stat-O-Seals?

A. Yes.

Q. Will you name some of them for us?

A. Bolt-O-Seal, Riv-O-Seal, and Gask-O-Seal,

(Testimony of Foster Hagmann.)

Termin-O-Seal. That is all I recall at the moment.

Mr. Fulwider: Will you mark this exhibit next in order?

The Clerk: 109 for identification.

The Court: For identification only.

(Documents marked Plaintiffs' Exhibit 109 for identification.)

Q. (By Mr. Fulwider): Can you identify this Exhibit 109 for me? Does that illustrate the products that you just mentioned? A. Yes, sir.

Q. Were these catalogs, Exhibit 109, widely distributed to the trade?

A. Very widely, yes, sir.

Mr. Fulwider: I would like to offer 109 in evidence, your Honor, as illustrating the line of products made by the plaintiff Wolfe Company.

The Court: It may be received in evidence.

The Clerk: 109.

(Said documents were received in evidence as Plaintiffs' Exhibit No. 109.)

Q. (By Mr. Fulwider): Mr. Hagmann, does the Wolfe Company advertise the various products illustrated in the catalog, Exhibit 109?

A. Yes, sir.

Q. Are any of those products in the catalog, 109, other than Lock-O-Seals or Stat-O-Seals sold in large quantities?

A. Yes, they are all, with the exception perhaps of the Termin-O-Seal, they are sold in substantial quantities.

Q. Are they sold pretty generally throughout the

(Testimony of Foster Hagmann.)

United States? A. Yes, and Canada.

Q. In the course of your duties for the Wolfe Company, have you called on customers of Wolfe Company [916] since the advent of Duo-Seal on the market? A. Yes, sir, I have.

Q. In the normal course of your duties, about what portion of your time is spent in calling on customers?

A. Generally about half my time is spent on the road.

Q. And what is your procedure in that regard?

A. I call on the various aircraft companies, the component manufacturers have design consultations and meetings, together with our salesmen, and the engineers and the companies.

Q. And when you go East, for example, to call on a large customer, you take the representative or salesman in that area with you?

A. Yes, sir.

Q. And you sometimes hold meetings, do you, where you address the engineers and answer questions?

A. Generally speaking, that is the purpose of my calls.

Q. Have you noted any instances of confusion between "Stat-O-Seal" and "Duo-Seal"?

A. Well, yes, there have been some.

Q. Have you had any occasions where people, engineers or others, and customers upon whom you were calling have handed you a Duo-Seal and asked you who made it? [917]

(Testimony of Foster Hagmann.)

Mr. Miller: Now, your Honor, I object to that unless a proper foundation is laid.

The Court: Well, you can answer that yes or no, and then you can determine when and where it was and who was present, and so forth. A. Yes.

Q. (By Mr. Fulwider): Can you tell us about when and where any of those occasions happened?

A. Well, I can't pinpoint them exactly. I know it has happened. I talked to a great many hundreds of engineers throughout my travels, and I don't believe I could pinpoint any specific instances, but it has happened. [918]

Q. Have you had any similar happenings in some of these meetings that you have mentioned?

A. Yes.

Q. On any of these occasions have you been asked a question as to whether or not the Duo-Seal that was handed to you was made by your company, the Wolfe Company? A. Yes.

Q. Do you recall whether the Wolfe Company has ever received any purchase orders or other written documents indicating that customers were confused between Duo-Seals and Stat-O-Seals?

A. Yes, we have.

Q. I call your attention to Exhibits 80 and 79. Exhibit 80 bears the notation, Beech Aircraft Purchase Order No. A 68703-19, dated April 24, 1956. Exhibit 79 bears the notation Beech Aircraft Corporation, purchase order No. A 70406-19, dated May 10, 1956.

Will you explain to us what is ordered in these

(Testimony of Foster Hagmann.)

two purchase orders from Beech and the occasion for receiving them?

Mr. Miller: The documents speak for themselves. I object to the witness' characterization of them.

Mr. Fulwider: I will ask the witness to just read the substance.

The Court: Can the documents be introduced in evidence? [919]

Mr. Miller: If they are properly authenticated here.

Q. (By Mr. Fulwider): Are these copies of documents in the records of the Wolfe Company?

A. Yes.

Q. Kept in the usual course of business?

A. Yes.

Q. And produced from those records by an employee at your request? A. Yes, sir.

Mr. Fulwider: I offer them in evidence, your Honor.

The Court: They may be received in evidence.

The Clerk: Exhibits 79 and 80.

(The exhibits referred to were received in evidence and marked as Plaintiffs' Exhibits 79 and 80.)

[See Book of Exhibits.]

Mr. Fulwider: I would like to call the court's attention to the fact that in Exhibit 80, Beech Aircraft is ordering 8,000 Stat-O-Seals, the number being 600-001-1¼, O.S. Stat-O-Seal.

The next one, Exhibit 79, Beech Aircraft is order-

(Testimony of Foster Hagmann.)

ing from the Wolfe Company 2200, 600-00-1-5/16
Duo Seals.

Q. Those purchase orders were received by the
Wolfe Company, were they not?

A. Yes, sir.

The Court: And filled, I suppose? [920]

The Witness: Yes, sir. I hope so.

Mr. Fulwider: They should have been.

The Witness: They had our part number on them.

Q. (By Mr. Fulwider): When did you first hear
of Duo-Seals, Mr. Hagmann?

A. Well, I don't recall exactly when it was. It
was, I think, some time early in 1953.

Q. 1953? Duo-Seals?

A. I am not too clear on it because——

Mr. Fulwider: May I assist the witness, your
Honor, to recall the testimony of Mr. Karres that
they were first offered to the trade in November,
1953.

The Witness: Well, it was probably early in
1954, then, along in March or April.

Q. (By Mr. Fulwider): Do you recall the occa-
sion of seeing the first Duo-Seal, that is to say, the
occasion of first seeing a Duo-Seal?

A. Yes. It was brought in by one of my sales-
men. He had picked it up as a sample that had
been left with a company on his territory.

Q. After you had seen the Duo-Seal, did you
have a conversation with Mr. Kerley and Mr. Kar-
res, either together or separately, concerning the
manufacture of the Duo-Seal?

(Testimony of Foster Hagmann.)

A. Yes, I had conversations separately with Mr. Karres, Mr. Kerley, and Mr. Grass. [921]

Q. Approximately, when were those conversations?

A. This was in late March, I believe, or early April of that year.

Q. I will ask you about the Kerley one first. Where was that conversation?

A. I called him and made an appointment and met him at Rubber Teck. We went to a restaurant and discussed the matter for an hour or two over lunch.

Q. Will you tell us briefly the substance of what you told Mr. Kerley and what he told you?

A. Yes. I told him that in my opinion or, rather, in the opinion of our counsel, this part was an infringement of the Lock-O-Seal patent.

I also called his attention to the fact that it seemed unfair that they should go into a business that we had been in jointly, and it did not seem to me that they had any moral right to be in it.

Q. What did Mr. Kerley say in substance?

A. Mr. Kerley was noncommittal at first, but later said, "Well, as far as I am concerned, we will stop the production of them. As far as I am concerned, we will leave it up to Mr. Karres."

Q. Then did you have a conversation with Mr. Karres?

A. I next had a conversation with Mr. Grass. Mr. Grass was ill at the time and I saw him at his home. [922]

(Testimony of Foster Hagmann.)

Q. What was the substance of that conversation?

A. Generally, it was the same thing. I pointed out that we felt that it not only was an infringement, it certainly seemed like an unfair thing to do.

Q. What did Mr. Grass say?

A. Well, Mr. Grass reacted pretty much the same as Mr. Kerley. He said as far as he was concerned, he would leave it up to Mr. Karres, he would be perfectly willing to stop producing them.

Q. Then tell us about the conversation with Mr. Karres.

A. Well, this took place, as I recall, the following day at Mr. Karres' office, which was then on Higuera Street. I called his attention to substantially the same thing that I had discussed with Mr. Kerley and with Mr. Grass, and I elicited from him the agreement that he would cancel orders that they had and that he further would not permit the manufacture of them until and unless he gave us prior notice.

Mr. Fulwider: That's all, your Honor. Oh, I have one more question.

Q. Did you ever get notice from Mr. Karres or anyone at Rubber Teck that they intended to go back into the manufacture of Duo-Seals?

A. No, sir, we did not.

Q. But they did go back into the manufacture?

A. Yes. [923]

Mr. Fulwider: That's all.

(Testimony of Foster Hagmann.)

Cross Examination

Q. (By Mr. Miller): Referring to this conversation you had with Karres, didn't Mr. Karres tell you that they would discontinue the manufacture of Duo-Seals only so long as it took to have some patent lawyer or somebody investigate the patent situation? A. No.

Q. Was there any mention made at all by Mr. Karres of having someone investigate the patent situation?

A. There may have been. If there was, I don't recall it.

Q. Did he tell you he planned to have a search made with relation to the Gross patent?

A. I don't believe he did, no.

Q. Did he tell you he was going to quit making Duo-Seals, period, forever?

A. He told me he was going to quit making Duo-Seals, that if he went back into the business, he would give us prior notice.

The Court: What difference does it make? Suppose he had made that promise? It doesn't mean anything. There was no consideration for the promise. There is no contract, but only a voluntary statement. [924]

Mr. Miller: That is true.

Q. Do you have any other instances besides Exhibit 79 where some aircraft corporation sent an order to Franklin C. Wolfe Company for Duo-Seals? A. I wouldn't know.

Q. Haven't you made a search?

(Testimony of Foster Hagmann.)

A. I don't know how extensive the search was.

The Court: Was a search made?

The Witness: I believe that a cursory search, at least, was made of the files. You will notice these are of a late date.

Q. (By Mr. Miller): Don't you know that they were requested to get all of the instances of mis-addressed orders? A. I don't know that, no.

Q. I call your attention to this Exhibit 79. In front of the Duo-Seal there is a notation 600-001-5/16. What does that signify?

A. It is our part number with the Rubber Teck or the Duo-Seal trade name after it.

Q. What does this BC 44721510 mean?

A. It is probably some stock number of Beech's.

Q. Is it customary practice of the engineers in the airplane factories on their drawings to have call-outs on the drawings for the part number of the manufacture? A. I believe so. [925]

Q. And they also have call-outs for the trade name of the manufacturer?

A. I wouldn't say that is the general practice, no.

Q. Does that occur in the majority of cases, or would you say it is a very minority?

A. I don't think I could say accurately.

Q. When these seals are used on the average aircraft, the engineer knows whether or not the seal has been approved by his own company or has been approved by Wright Field?

(Testimony of Foster Hagmann.)

Mr. Fulwider: I object, your Honor, calling for a conclusion?

The Court: Sustained. You are asking this witness something that if he knows he would only know by hearsay testimony. You are asking for a conclusion.

Q. (By Mr. Miller): How careful are these engineers in specifying a certain seal when they are laying out their layouts for a plane?

Mr. Fulwider: Object for the same reason.

The Court: Objection sustained. He can't testify as to what an engineer does. He is not there. We assume that all engineers are careful. [926]

Mr. Miller: I thought the witness testified to a large number of conversations here that he has had with engineers.

The Court: Well, if you had made an objection, I might have sustained an objection, but you did not make an objection. We have an objection made now.

Q. (By Mr. Miller): Now, when you told Mr. Kerley that you thought it was unfair for Mr. Kerley or Rubber Teck to make the Duo-Seals, did Mr. Kerley make any statement to you to the effect that your manufacturing the Stat-O-Seal was in violation of his exclusive agreement to manufacture the Lock-O-Seals?

A. He did not make such a statement.

Q. Did he say that your manufacturing of the Stat-O-Seal was unfair insofar as he was concerned?

A. No. He didn't.

(Testimony of Foster Hagmann.)

Q. Was the matter of the Stat-O-Seals discussed at all? A. No, sir.

Q. And what was Mr. Kerley's reply when you said it was unfair?

A. I don't recall his reply, but I suppose it could be assumed that his reply was somewhat favorable, since he said he would leave it—so far as he was concerned, it was all right to stop manufacturing them, it was up to Mr. [927] Karres.

Q. So he put the matter all up to Mr. Karres?

A. Yes, he did.

Q. And so did Mr. Grass? A. Yes.

Mr. Miller: That is all.

Mr. Fulwider: Step down. The Plaintiffs rest, your Honor.

(Whereupon the Plaintiffs rested their case in chief.)

The Court: Mr. Miller, do you have any motions you want to make?

Mr. Miller: Yes, your Honor.

The Court: If you want to make a motion, I wish you would make it now so we can dispose of it.

Mr. Miller: Well, I make a motion to dismiss the Second Cause of Action here that alleges the violation of trade secrets.

The Court: I know what it alleges.

Mr. Miller: I don't believe there is any element of proof to support that Second Cause of Action. The Duo-Seal—

The Court: Now, don't argue the matter. I have

heard the testimony. The motion is denied.

Mr. Miller: The motion is denied?

The Court: Yes. Any other motion?

Mr. Miller: I make a motion to dismiss the First [928] Cause of Action on the ground that the patent in suit is invalid as to its claim, because of the fact that the claim is vitally defective, it being indefinite.

The Court: May I ask you a question: we have got Claim 1 and Claim 2 in the patent. This suit is to establish both claims, isn't it?

Mr. Fulwider: Just on Claim 1, your Honor.

Mr. Miller: Claim 1.

The Court: You are just asking to establish Claim 1?

Mr. Fulwider: Yes. We do not allege infringement of Claim 2.

The Court: Oh, you don't?

Mr. Fulwider: No.

The Court: Well, Mr. Miller, I don't think I am justified in dismissing at this time upon that ground, although that may be something which I will consider at the time I render a decision in this case. I wouldn't want to dismiss this case on a summary motion, so your motion is denied, without prejudice.

Mr. Miller: Very well, and as to the first motion, is that denied without prejudice?

The Court: No. Your first motion is denied, not without prejudice. It is just denied because—well, it is without prejudice because it is a question that this Court has to determine, as to whether or not

there has been [929] any unfair competition, in the light of all the testimony.

Now, I don't know what trade secrets have been appropriated by you, but, however, there may be unfair competition here. I do not know as it is limited only to the trade secrets. Unfair competition goes to more than trade secrets, doesn't it?

Mr. Miller: Yes. That is a broad term, and we have been trying to pinpoint what they are complaining about in this case. Here on the unfair competition, there is competition, that is true.

The Court: Well, one of the things that I thought might be unfair competition in this case was the use of the word "Duo". It is alleged in the complaint that the plaintiff uses the word "O". Now, I do not know how the defendant happened to pick the word "Duo", to use the word "Duo". That might be an unfair practice. I don't know. However, the plaintiff hasn't complained any so far about using that word.

Mr. Fulwider: Well, your Honor, except as a part of unfair competition. We did not include a separate count for trademark infringement per se.

The Court: That may be an item of unfair competition. I may restrain you from using the word "Duo", without restraining you from manufacturing them. I might restrain you from using the word "Duo", because it is similar to the [930] word the plaintiff uses, and if you had copied a word that sounds something like the plaintiff's word and the plaintiff had been using it for some time, and I don't think there is any question but what the plain-

tiff has been using it for some time, that might be unfair competition. However, you may have evidence to show that that word has been used, that the "O" has been used for years and years by other people.

Mr. Miller: Definitely.

The Court: But at the present, I don't have that evidence before me.

Mr. Miller: But here, on that point the word "Seal" is descriptive as applied to sealing devices.

The Court: Of course, the plaintiff cannot get an exclusive right to use the word "Seal".

Mr. Miller: All right.

The Court: But he might get the exclusive right to use the words "O-Seal". I don't know whether he has or not—he might get that right, although you may be able to show that that word "O" has been used many, many times, not only as far as the word "Seal" is concerned, but "O'Malley" or "O" something.

Mr. Miller: Your Honor could almost take judicial notice of the fact that the B. F. Goodrich Company has the coral seal. [931]

The Court: I don't know, Mr. Miller, there may be some elements of unfair competition here that can't be disposed of without hearing the defendant's testimony, and I think I should hear the testimony of the defendants. [932]

* * * * *

Mr. Miller: If the Court please, last evening, we were requested to bring in some samples of Duo-Seals. There is a large size (indicating) cut in half,

and I have one sample here in which half of the rubber has been removed to show the inside of the metal ring, which I will offer in evidence.

The Court: It may be received.

The Clerk: As Exhibit AB.

(Said object was received in evidence as Defendants' Exhibit AB.)

Mr. Miller: And also I have here another sample of the same type of ring that is cut in half.

The Court: It may be marked.

The Clerk: AC. Is that in evidence?

Mr. Miller: We will offer both in evidence.

The Court: They will be received.

The Clerk: AB and AC.

(Said object was received in evidence as Defendants' Exhibit AC.)

Mr. Fulwider: What is the size of AC, is that the bigger one or—— [935]

Mr. Miller: That is in half. I don't have an extra piece where the rubber was just cut away.

I will offer in evidence the book of patents, prior patents, Exhibit A.

The Court: It may be received in evidence.

Mr. Fulwider: Your Honor, we object. We have no objection, of course, to having all the patents bound in one book, but we do object to two of the patents in the book, because the dates are not early enough, the Dowty patent and the Johansson patent.

The Court: Well, if they are not early enough, I will disregard the patents.

Mr. Fulwider: I mean they are not early enough

for any purpose, your Honor, so they are not prior art.

The Court: Well, if they are not prior art, I will disregard them. We don't have any jury here.

Mr. Fulwider: I realize that, your Honor.

The Court: Now, the objection is overruled. The patents may be introduced in evidence.

The Clerk: Exhibit A.

(Said book of patents heretofore marked Defendants' Exhibit A for identification was received in evidence as Defendants' Exhibit A.)

[See Book of Exhibits.]

Mr. Lee: Your Honor, can it be understood that we have a running objection to any testimony concerning these [936] patents?

The Court: Yes, you can have an objection and a running objection, both.

Mr. Lee: And, your Honor, one more question, may we have that, if there is any testimony concerning those two patents, and also about waiving our objection?

The Court: Yes, you can do that.

Mr. Lee: Thank you, your Honor.

Mr. Miller: Now, I will offer in evidence the book of trademark registrations, Exhibit B.

The Court: It may be received in evidence.

The Clerk: Exhibit B.

(Said book of Trademark Registrations heretofore marked Exhibit B was received in evidence as Defendants' Exhibit B.)

[See Book of Exhibits.]

Mr. Miller: I offer in evidence the file wrapper and contents of the patent in suit, Exhibit C.

The Court: It may be received in evidence.

The Clerk: Exhibit C.

(Said documents heretofore marked Exhibit C were received in evidence as Defendants' Exhibit C.)

Mr. Miller: I will offer in evidence also a group of patents, to complete, with the patents that are in Exhibit A, the file wrapper references that were cited in the [937] file wrapper, this being a copy of the Lehman Patent No. 1,254,514, issued January 22, 1918.

Mr. Fulwider: Will you mark those as one exhibit?

The Court: Are you going to offer these as one exhibit?

Mr. Miller: I can offer them as one exhibit. It is merely to complete and have before the Court the file wrapper references.

The Court: They may be received in evidence.

The Clerk: Is this your next exhibit?

Mr. Miller: Yes.

The Clerk: AD.

The Court: Exhibit what?

The Clerk: AD.

(Said documents were received in evidence as Defendants' Exhibit AD.) [938]

Mr. Miller: I will also offer for the purpose of showing the state of the art two prior patents, one being to Hubbard, 1,942,703, issued January 9,

1934; and the other being to Bohmer, Jr., et al., No. 2,200,212, issued May 7, 1940.

Mr. Fulwider: Were those pleaded or included——

Mr. Miller: No, they are merely offered to show the state of the art.

Mr. Fulwider: I object, your Honor. The statute expressly states all prior patents to be relied on for the state of the art or otherwise, we are to have 30 days notice of.

The Court: They may be marked for identification only.

The Clerk: AE for identification.

(The exhibit referred to was marked Defendants' Exhibit AE for identification.)

Mr. Fulwider: Do you have extra copies, Mr. Miller?

Mr. Miller: No. I am sorry, Mr. Fulwider, but we didn't learn of these until pretty late. I learned of those here just about a week before—well, it was the Friday before the trial started.

The Court: Mr. Fulwider, I might say this question is now before the Circuit. In a previous case I tried, during the course of the trial they discovered prior art and brought in evidence of the fact that the so-called invention [939] had been used prior to the invention, and I allowed it to come in. Appeal was taken upon the fact that there was no mention made in any of the proceedings and no disclosure was made to the opposing side and it came as a surprise. I allowed it in because it was only

discovered then. It was discovered during the course of the trial.

Mr. Fulwider: I think the principle is sound because, after all, all relevant evidence ought to be before the court. My only point is I think the proper construction of it is that immediately counsel knows of it, he should give us either formal or informal notice. In a week we could have had copies here. I don't know whether these are relevant. I will look at them during the recess.

The Court: I will mark them for identification only.

Mr. Miller: I will also ask counsel to stipulate that the residence of Mr. Cornwall is more than 100 miles from court.

Mr. Fulwider: As far as I know, yes. [940]

* * * * *

Mr. Miller: I will offer in evidence the deposition of Leo W. Cornwall taken July 15, 1955, at San Diego. [941]

* * * * *

The Clerk: What page of this is Mr. Cornwall's deposition?

Mr. Miller: His deposition begins at page 3 and it ran over to and including page 34.

The Clerk: That is marked for identification AF.

(The exhibit referred to was marked Defendants' Exhibit AF for identification.)

Mr. Miller: Does that offer include the two exhibits, Exhibits being marked 1 and 2, that are referred to at pages 9 and 23 of the deposition?

The Court: Yes, that will include the exhibits, too.

Mr. Fulwider: Could they be marked AF-1 and -2, maybe?

The Clerk: Where are the exhibits?

Mr. Miller: This is Exhibit 1, or a copy of it anyway.

The Clerk: Is that part of the deposition?

Mr. Miller: Yes.

The Clerk: The deposition is AF, and this exhibit will be AF-1 for identification and the other AF-2 for identification.

(The exhibits referred to were marked as Defendants' Exhibits AF-1 and AF-2 for identification.) [943]

Mr. Miller: I will offer in evidence Exhibit D, a copy of the application filed by the Franklin C. Wolfe Company endeavoring to register the trademark Duo-Seals.

The Court: It may be received in evidence.

The Clerk: Exhibit D.

(The document referred to was received in evidence and marked as Defendants' Exhibit D.)

[See page 784.]

Mr. Miller: May we stipulate, counsel, that application has now become abandoned?

Mr. Fulwider: Yes.

* * * * *

ROBERT H. ELEM

called as a witness herein by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Miller): Were you once employed by the Franklin C. Wolfe [944] Company?

A. Yes, sir.

Q. In what capacity? A. Sales engineer.

Q. Over what period of time?

A. Approximately three and a half years.

Q. Were you employed by the Franklin C. Wolfe Company in 1952? A. Yes, sir.

Q. I show you one of the papers forming a part of Exhibit 101, headed "Write It, Don't Say It," and call your attention to some handwriting on that exhibit. Whose handwriting is that?

A. That is mine.

Q. Did you make this notation on August 7, 1952? A. Right.

Q. What was the occasion of making that memorandum at that time?

A. By occasion, do you mean——

Q. What were the circumstances?

A. The company involved, Fletcher Aviation, had been after our company for quite some time to make a one-piece Lock-O-Seal instead of a two-piece, due to mechanical oversight or lack of proper supervision to put both parts together when they installed a tank or assembled a tank. [945]

Q. Did you discuss this with Fletcher Aviation?

(Testimony of Robert H. Elem.)

A. Yes, sir.

Q. Who did you talk to over there?

A. Paul Reischauer.

Q. Did you discuss this problem with him?

A. Yes, sir.

Q. Prior to this discussion that resulted in your making that memorandum, had you ever seen a one-piece Lock-O-Seal or similar sealing device?

A. Yes. [946]

Q. (By Mr. Miller): What kind of a device was it that you saw?

A. Well, it was a rubber bonded to metal device.

Q. Are you familiar with the Duo-Seal that are put on the market today? A. Yes.

Q. How do they compare with the Duo-Seals?

A. Well, configuration-wise, similar.

Q. And where did you see that?

A. First I saw it at Paul Smith's office.

Q. And who had it? A. Joe Kerley.

Q. Were you a participant of the conversation between Mr. Smith and Joe Kerley?

A. I was at the office.

Q. Approximately when did that occur?

A. The early part of the year, I judge January, February.

Q. Of 1952? A. Right.

Q. Do you recall any of the conversation that went on between Mr. Kerley and Mr. Paul Smith?

A. Mr. Kerley submitted it as a possible solution to the two-piece problem and Mr. Smith said it was no good, it wouldn't work. [947]

(Testimony of Robert H. Elem.)

Q. Had Mr. Kerley brought any of that bonded seal to Mr. Reischauer? A. Yes.

Q. Is that how you happened to see them over there?

A. Mr. Reischauer showed me some samples that were given to him by Mr. Kerley.

The Court: Now, how do you establish this as January or February, 1952? How do you know it was '52?

A. Well, sir, I called on Fletcher Aviation over a period of at least once every thirty days, and this had been a problem that they had had for a considerable time before them, and——

The Court: Yes, I know, but you said it was in 1952, now, in January or February. Now, how do you establish that it was in January or February?

A. I would have to check on the register at the Fletcher Aviation Corporation to determine when I last called on them in 1951, to testify to that, your Honor.

The Court: When did you stop working for the Wolfe Company? A. August, 1953.

Q. So this was a year and a half, then, was it?

A. Yes.

The Court: Before you stopped working for them? A. Right. [948]

The Court: All right.

Q. (By Mr. Miller): Are you sure that when you first saw the bonded rubber seal that it was before you made this memorandum, Exhibit 101?

Mr. Fulwider: May I object to that. What

(Testimony of Robert H. Elem.)

bonded seal is he talking about now? Now, he has made reference to a couple, as I understand it.

Q. (By Mr. Miller): The bonded seal that Mr. Kerley showed Mr. Smith and also the bonded seal that Mr. Kerley had delivered to Mr. Reischauer.

A. Yes, sir, I am quite sure.

Mr. Fulwider: Now, he saw it at this conversation he said he had with Kerley and Wolfe in '52, which was before the date of the invoice, is that the testimony?

Mr. Miller: Yes, definitely. He is quite sure of that.

Mr. Fulwider: Did he testify yet as to when he saw——

The Court: Well, now, let me find out. You were referred to a part of Exhibit 101 and you identified a memorandum as being in your handwriting?

A. Yes, sir.

The Court: Now, the invoice shows that this was dated 8-12-52?

A. Yes, sir.

The Court: Now, would you say that you saw this [949] one-piece seal that Mr. Kerley had been talking to Mr. Smith about before the date of this invoice?

A. Considerably, your Honor.

The Court: Months?

A. Yes, sir.

Mr. Miller: You may cross examine.

(Testimony of Robert H. Elem.)

Cross Examination

Q. (By Mr. Fulwider): Now, Mr. Elem, describe for me this bonded one-piece seal that you say you saw Mr. Kerley hand to Mr. Smith in Mr. Smith's office. How was it constructed?

A. Well, it was a washer with essentially a doughnut bonded by means of vulcanizing to the inner dimension of the washer.

Q. How do you know it was vulcanized?

A. That is the only way you make rubber stick to metal, sir.

Q. Did Mr. Kerley tell Mr. Smith that it was vulcanized?

A. I question whether the statement would have been necessary under the circumstances.

Q. The answer is "No", then? A. "No".

Q. Did he?

A. No, he didn't tell him it was vulcanized.

Q. Did Mr. Smith ask Mr. Kerley how the seal was made? A. No.

Q. You don't recall Mr. Kerley telling him how the rubber was bonded to the metal?

A. Well, these gentlemen are involved in the manufacture of rubber, sir.

Mr. Fulwider: Just answer the question, please, and then you can explain.

The Court: Read the question to the witness.

A. No.

Mr. Fulwider: The answer is "No".

Q. How many seals did Mr. Kerley show Mr. Smith at that time?

(Testimony of Robert H. Elem.)

A. Well, a handful, half a dozen or such a matter.

Q. Were any of those seals cut away so that you could see what the cross section of the rubber and metal was? A. No, sir.

Q. As a matter of fact, the rubber was cemented to the inside of the metal washer, wasn't it?

A. Not by mechanical means, sir, no. It was vulcanized to the metal.

Q. I didn't ask you about mechanical means. I say, as a matter of fact, isn't it a fact that the rubber washer was cemented to the inside of the metal washer? [951]

A. No, sir, it was not. It was vulcanized.

Q. How do you know that?

A. Because I am familiar with the application of the use of rubber with metal, and it was not cemented.

Q. And can you tell by looking at a washer on a Duo-Seal or a Stat-O-Seal whether or not it is cemented—— A. Yes.

Q. ——or vulcanized? A. Yes, sir.

Q. How do you do that?

A. Show it to me and I will show you.

Mr. Fulwider: Let us have one of these Duo-Seals.

Mr. Lee: Exhibit No. 8.

Mr. Fulwider: Exhibit 8; it is one of ours.

Q. Now, referring to Exhibit 8, will you explain to me how you can tell by observing these Duo-

(Testimony of Robert H. Elem.)

Seals whether or not they are vulcanized to the metal or whether they are cemented?

A. Yes, sir.

Q. Or how they are fastened?

All right, how?

A. There is a flash of rubber here indicating that there was cured rubber to metal. If they had cemented it, they wouldn't have had to cure the rubber to the metal.

Q. And do you remember examining these seals that [952] Mr. Kerley is supposed to have shown to Mr. Smith, enough—or strike that.

How do you remember whether or not the seal shown to Mr. Smith by Mr. Kerley had this flash that you mention? A. Yes, they did.

Q. You are positive of that? A. Yes, sir.

Q. Do you remember anything else about those seals? A. That they were one piece.

Q. What size were they?

A. Either 3/16 or quarter inch or a—10.

Q. What else did Mr. Kerley tell Mr. Smith in this conference that you listened to?

A. Nothing that I recall, sir.

Q. Do you recall anything else Mr. Smith said?

A. Nothing.

Q. Mr. Smith, as I understand, is supposed to have said that it would not work?

A. Yes, that is right.

Q. What wouldn't work?

A. The sealing device that Mr. Kerley submitted to him.

(Testimony of Robert H. Elem.)

Q. You mean it wouldn't seal?

A. It was "no good" was his term.

Q. Did he say why it was no good? [953]

A. No. Just that it was no good.

Q. He didn't explain to Mr. Kerley as to why he thought that this seal that Kerley was showing to him wouldn't seal satisfactorily?

A. I can't recall.

Q. What was the answer?

A. I can't recall.

Q. How did you happen to be present at this conference? A. Here?

Q. The one you have just related with Kerley and Smith?

A. I was more or less of a liaison personnel between Rubber Teck and the Franklin C. Wolfe Company and the employee of Franklin C. Wolfe as representatives for the Rubber Teck Company, and as such, was required to be present many times when either Mr. Kerley or Mr. Karres came over to the plant.

Q. Where was the Wolfe Company plant at the time of this conversation?

A. 3644 Eastham Drive, Culver City.

Q. Did Mr. Kerley and Mr. Smith discuss at all possible objections to manufacturing problems in the manufacturing of this seal Mr. Kerley is supposed to have shown him? A. Yes. [954]

Q. What did he say?

A. It would appear that they couldn't hold the tolerances that were required with the use of the

(Testimony of Robert H. Elem.)

type of molds that Mr. Otto Grass developed for manufacturing this part.

Q. Did he say that they couldn't hold the tolerances in those molds? A. Right.

Q. In this one-piece seal? A. Right.

Q. Do I understand your testimony, then, that it was stated at the conference that these one-piece seals, such as Kerley had with him, if he had them, couldn't be made by the equipment that the Duo-Seal Company or the Rubber Teck had at that time?

A. Not necessarily at that particular conference, sir. These things came up at a later date.

Q. That is the conference I am asking you about.

A. No, it didn't come out at that time.

Q. Were you at a later conference between Mr. Kerley and Mr. Smith? Is the answer no?

A. Yes, but I don't remember what the conference was about. It was not on the subject of one-piece Duo-Seals or Lock-O-Seals, or anything of that nature.

Q. Were these seals that Mr. Kerley showed to Mr. Smith referred to by him as Duo-Seals? [955]

A. No, sir, they were not.

Q. What did he call them?

A. Well, Mr. Kerley's terminology, I think he called it a gadget.

Q. This conference could have been early 1953, couldn't it?

A. No, sir, it could not have.

(Testimony of Robert H. Elem.)

Q. Why are you positive it is 1952?

A. Because it was not until after the one-piece device that Mr. Kerley showed to not only Mr. Smith, but Mr. Reischauer of Fletcher, that Mr. Smith developed what they now call the Stat-O-Seal, and that was considerably after the first one-piece sealing device I saw.

Q. What do you know of your own personal knowledge concerning the development of the one-piece Lock-O-Seal or Stat-O-Seal?

A. Mr. Smith——

Q. You were a salesman, weren't you?

A. Yes, sir, that's right. Mr. Smith felt that a mechanical attachment whereby you could simulate the actual configuration of an O ring within a washer was the optimum for this type of a sealing device, and as such they developed a seven coin, seven-stage coin die, so that they could spruel the rubber and attach it by mechanical means rather than by bonding. [956]

Q. That was quite a long while prior to the time Mr. Kerley showed the one-piece seals to Mr. Smith, wasn't it? A. No, sir, it was not.

Q. Your testimony is positively that this alleged conference and demonstration of a Duo-Seal was prior to the first manufacture by Wolfe Company of Stat-O-Seals, is that right? A. Yes.

Q. Was anyone else in this conference with Smith and Kerley?

A. It is possible Mr. Hagmann was there, but that is stretching my memory a little bit.

(Testimony of Robert H. Elem.)

Q. You say you had a conference with Mr. Reischauer in which he showed you some of these one-piece seals Mr. Kerley had given to him, or he said Mr. Kerley had given to him?

A. Yes, sir.

Q. Did you see Mr. Kerley give any seals to Mr. Reischauer, that is one-piece seals?

A. No, sir.

Q. When was this conference you say you had with Mr. Reischauer in which he showed you a one-piece seal Mr. Kerley had given him, allegedly?

A. Early part of 1952.

Q. That was likewise the early part of 1952?

A. Yes, sir.

Q. Are you sure that couldn't have been 1953 or 1954? [957]

A. No, sir. I was in Seattle, Washington, the early part of 1953 and I was not employed by the Franklin C. Wolfe Company in 1954.

Q. You left the Wolfe Company in August 1953, I take it?

A. That's right.

Q. Do you recall the circumstances of receiving this order, Exhibit 101?

A. Yes, sir.

Q. Was that on the telephone or in person, or how did you get that order?

A. Personal call on the company.

Q. As of August 1952, just a very few months after this alleged conversation between Kerley and Smith, you took an order from Mr. Reischauer for a one-piece Lock-O-Seal, didn't you?

A. Yes, sir.

(Testimony of Robert H. Elem.)

Q. They were all tooled up ready to deliver, weren't they?

A. No, sir, they were not. These were made in experimental molds.

Q. The date of the shipper is August, is it not? These were shipped August 18, were they not, first 125 and then—well, one shipped 8/12 and the other one 8/19, is that right? Will you refer to that shipper and tell me what quantities [958] were shipped on those dates?

A. 125 shipped 8/18/52 and 120 shipped 8/8/52.

Q. Where was this conference you had with Reischauer? A. In his office.

Q. You say that was early 1952?

A. Yes, sir.

Q. Tell me, did you get this order for Lock-O-Seals, one-piece Lock-O-Seals from Mr. Reischauer?

A. It came from his purchasing agent, Mr. Ernest Johnson.

Q. Ernest Johnson. Do you know whether or not he is still their purchasing agent?

A. No, sir, he is not.

Q. He is not any more? A. No, sir.

Q. Do you know where he is located now?

A. Mr. Johnson had a cerebral hemorrhage and was in Sawtelle, returned to Fletcher, and he is gone again. Whether he is back in the hospital, I don't know. But Mr. Reischauer is still with Fletcher.

Q. Did you have any conversation with Mr. Reischauer concerning one-piece Lock-O-Seals?

(Testimony of Robert H. Elem.)

A. Many times.

Q. Series 600? A. Many times. [959]

Q. When was the first conversation you had with Mr. Reischauer concerning Series 600 Lock-O-Seals?

A. When we were advised we had them available.

Q. When was that?

A. Probably—this is something I have to guess. It must have been somewhere in June or July.

Q. Of 1952? A. Yes, sir.

Q. Did you have any way at all of fixing the time when this conference was allegedly had between Kerley and Smith?

A. Well, sir, it had to be the early part of 1952, and I say January or February, because that denotes the early part of 1952 in my mind.

Q. The only way you fix it is it is now your testimony that it was prior to the Stat-O-Seal coming on the market? A. That is true.

Q. You have no other way of fixing that date?

The Court: You said you were in Seattle, I believe, the early part of 1953.

The Witness: That's right.

The Court: Were you up there continuously?

The Witness: I was there from February to the latter part of May.

Q. (By Mr. Fulwider): 1953?

A. Yes, sir. [960]

The Court: Where were you in August and September 1952?

(Testimony of Robert H. Elem.)

The Witness: Los Angeles.

The Court: Were you working for the Franklin C. Wolfe Company at that time?

The Witness: Yes, your Honor.

Q. (By Mr. Fulwider): When did you go to work for the Wolfe Company?

A. January of 1951—or was it 1950?

Q. January 1951? A. Yes, sir.

Q. I show you Exhibits 60 to 68. Will you examine those carefully and tell me whether or not you have ever seen any of those drawings or any drawings similar?

Mr. Miller: Objected to as improper cross examination. Nothing about this in the direct.

The Court: Overruled.

The Witness: I can identify these. I cannot identify these, because I am not a tool and die man.

Q. (By Mr. Fulwider): Which ones do you identify?

The Court: When you come to read the record, “these” doesn’t mean anything.

The Witness: I can identify No. 60, 61, 63, 65, 66 and 68.

Q. (By Mr. Fulwider): And what do they represent? [961]

A. No. 68 represents a cross-section of the rubber attachment.

Q. For what? Stat-O-Seal, one-piece Lock-O-Seal?

A. What they call the one-piece Lock-O-Seal here. No. 66 represents another cross-section of the

(Testimony of Robert H. Elem.)

one-piece Lock-O-Seal of a different dimension, $\frac{5}{8}$.

No. 65 gives the cross-section of the metal washer.

No. 63 identifies another cross-section of the rubber or one-piece Lock-O-Seal.

No. 62 identifies a mold insert for a $\frac{1}{4}$ inch one-piece Lock-O-Seal.

No. 61 identifies another cross-section of $\frac{1}{4}$ inch one-piece Lock-O-Seal.

No. 60 identifies the cross-section of the actual washer. It is not identified here by any designation.

Q. Did you see one-piece Lock-O-Seals made substantially as shown in those drawings at about the date of those drawings?

A. I saw samples.

Q. Yes. So there were Lock-O-Seals made according to these drawings as of the dates there, Exhibit 60 being April 18, 1952?

A. No, sir. It would take them at least 45 days to make the tooling to make that after they made the drawings.

Q. And you didn't see any one-piece Lock-O-Seals until [962] 45 days after the dates of these drawings, is that right? A. At least.

Q. At least that. When did they start making the tooling for the Stat-O-Seals?

A. After the drawings were finished. [963]

Q. (By Mr. Fulwider): Do you recognize Exhibit 108? A. Yes, sir.

Q. That is a tooling drawing, is it not, of a Lock-O-Seal, of a one-piece Lock-O-Seal?

A. It is a tooling drawing of a metal part.

(Testimony of Robert H. Elem.)

Q. Yes. And is it your testimony that those metal washers as shown in 108 were made 45 days after that date?

A. I would say, sir, that I know they encountered difficulty with this 7-stage coining die and 45 days would be a very conservative estimate as to when they turned out part of it.

Q. About how long did it take them, do you remember, to actually get the dies so they would work, from the time they first started on them?

A. Not less than three months.

Q. Could it have been more than three months, do you think? A. It could have been.

Q. What sort of trouble did they have with these coining dies?

A. They couldn't hold their tolerance as near as I know, being a salesman and not a tool and die maker.

Q. Do you remember when they started development, made up the first experimental tools, dies, for the washers on the Stat-O-Seals? [964]

A. It was between the period of April and August that they started.

Q. It could not have been any earlier than April? A. No, sir.

Q. How do you know that?

A. Because the first drawing shows 4/16/52.

Q. And you base it upon the date of that drawing that I showed you, is that the one here?

A. Yes, sir, this Exhibit 108.

You can't make tooling without drawings, sir.

(Testimony of Robert H. Elem.)

Q. Is it your testimony that they didn't have any tooling for making coining metal washers for one-piece seals prior to this date?

A. Basing it on the date on this drawing, no, sir.

Q. If I showed you a drawing three months earlier, then your testimony would be that they had tools three months earlier, is that right?

Mr. Miller: I object to it as argumentative.

The Court: Sustained.

Q. (By Mr. Fulwider): Did you make any—did you turn in any type of work report to the company while you were employed with the Wolfe Company? A. Yes, sir.

Q. What type of report did you make to the company of your activities? [965]

A. Many of them were verbal, to Mr. Hagmann.

Q. Did you ever make any written reports of any type? A. Yes, sir.

Q. What type, how were they made?

A. They were made on a piece of paper outlining my activity, particularly on a road trip.

Q. When you were out of town, would you send a memorandum to Mr. Hagmann periodically of what you were doing? A. Right.

Q. How about your expense accounts, did you send them in periodically? A. Yes, sir.

Q. Now, when you were operating out of Los Angeles, did you always send, make some type of written memorandum of your sales trips outside of Los Angeles area? A. Yes, sir.

(Testimony of Robert H. Elem.)

Q. Did you make any type of written memorandum of your activities in the Los Angeles area?

A. Depending on the importance of the call. If it was not important, no. If it was, I did.

Q. What was your procedure for taking orders from customers for Lock-O-Seals and Stat-O-Seals?

The Court: Now, if you have any written memorandum, [966] let us have the written memorandum and not waste time to lay a foundation here. Now, if you have any written memorandum that is important to the case, let us have it.

Mr. Fulwider: I am wondering what type of written memorandum he made on orders he took here in the Los Angeles area.

Were they like the little one as part of Exhibit 101? Was that your usual way of taking an order?

A. No. It was not my usual way of taking an order. There is not a usual way of taking an order, sir.

Q. Did you have anything in the nature of an order book or an order blank? A. No, sir.

Q. Did you keep any kind of a time sheet when you were with the Wolfe Company?

A. No, sir.

Q. At any time during 1952 were you out on the road? A. Yes, sir.

Q. During what period?

A. It is impossible to say.

Q. You don't remember? A. No, sir.

Q. Do you remember how much of the year 1952 you were outside of the Los Angeles area?

(Testimony of Robert H. Elem.)

A. 90 days total over the whole year. [967]

Q. Did you talk to anybody about this case before you came up here today?

The Court: I think that is one of the silliest questions that any attorney asks a witness, because I think if any attorney would put a witness on the stand without talking with him, the attorney would be derelict. The attorney talks to witnesses. He has to, to find out what he is going to testify to.

Mr. Fulwider: I very seldom use it, your Honor, but I very seldom run into a witness who in my opinion is not telling the truth.

The Court: Well, I am talking of attorneys generally, because I find that question is asked in pretty nearly every case, and I think it is the silliest question that can be asked of a witness.

Mr. Fulwider: I always talk to my witnesses and I assume Mr. Miller does, too.

The Court: Why, sure. If Mr. Miller didn't talk to this witness, I would think Mr. Miller was derelict in handling this case.

The Witness: I have talked to your own counsel.

Mr. Fulwider: That is right.

Q. When did you first talk to Mr. Karres about coming up here today to testify?

A. When did I first talk to him about it? [968]

Q. Yes. A. When I first heard about it.

Q. About the lawsuit? A. Yes.

Q. When did you first talk to Mr. Karres most recently about testifying today?

A. I talked to Mr. Karres yesterday.

(Testimony of Robert H. Elem.)

Mr. Fulwider: I would like, if the Court will, to keep this man available for the afternoon session and give me a chance to talk to Mr. Smith and Mr. Hagmann, because I don't believe his story.

The Court: All right. He will remain while we are in session and remain here the rest of the day, and if you want to postpone any further cross examination until you have had time to talk to other witnesses, all right. You admit you talk to witnesses, I suppose?

Mr. Fulwider: I certainly do.

The Court: I will be glad to let you recall this man for further cross examination.

Mr. Fulwider: I do have one more question here. Mr. Lee calls my attention to a drawing. Is this marked?

Mr. Lee: No.

The Court: It may be marked.

The Clerk: 110 for identification.

(Said drawing was marked Plaintiffs' Exhibit 110 for identification.) [969]

Q. (By Mr. Fulwider): Can you identify the Exhibit 110 for me?

A. Sir, I can identify it all right, but Mr. Nenzell was not in the employ of the Franklin C. Wolfe Company on the 29th of October, 1951.

Q. I will accept that observation, but what does this drawing show? A. It shows a washer.

Q. What kind of a washer?

A. A one-piece Lock-O-Seal.

Q. And the date on that drawing is what?

(Testimony of Robert H. Elem.)

A. October 29, 1951.

Q. Did you see that drawing or a drawing similar to that at about that date?

A. Not that I can recall.

Q. Experimental Lock-O-Seals were made in accordance with that drawing, weren't they?

A. Yes.

Q. At about the date of the drawing, weren't they? A. No, sir.

Q. What is your recollection of the earliest one-piece Lock-O-Seal you saw made in accordance with this drawing?

A. As I mentioned awhile ago, you don't make a part the day the drawing comes off the board.

Q. Now, you do remember seeing Lock-O-Seals made like that drawing, don't you?

A. Similar to it.

Q. Yes, and when did you first see those Lock-O-Seals?

A. Those were the first ones before they developed the 7-stage coining die.

Q. Yes, that was an earlier stage of development, I take it? A. Yes.

Q. Did they ever manufacture and sell those to the trade as shown in the exhibit you have in your hand? A. No.

Q. How many different stages do you recall of development of the metal ring were there before they finally came up with the one that they sold to the trade?

A. It would be difficult to say, sir. [971]

(Testimony of Robert H. Elem.)

Q. How many stages or types of experimental rings did they make at the Wolfe Company prior to this one shown in Exhibit 110?

A. Hundreds of different ones.

Q. Hundreds of different experimental rings prior to this one here in 110?

A. No, not prior to that.

Q. After this?

A. Well, it would have to be after that.

Q. Why would it have to be after this if they are a different type of ring?

A. Well, this is similar to the ring that Rubber Teck makes. If that is no good, then Rubber Teck's is no good, and vice versa.

Q. Oh, I see.

Mr. Fulwider: I would like to offer this in evidence, your Honor, Exhibit 110.

The Court: It may be received in evidence.

The Clerk: Exhibit 110.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 110.)

[See Book of Exhibits.]

Mr. Miller: Could I make an objection just for the record?

The Court: You can.

Mr. Miller: The document hasn't been properly [972] identified or authenticated.

Mr. Fulwider: This witness identified it.

Mr. Miller: To a certain extent, but the witness——

(Testimony of Robert H. Elem.)

The Court: Don't give your argument now. You wanted to make an objection for the purpose of the record.

Mr. Miller: That's right. My point is this. The witness said Mr. Menzell wasn't there who was supposed to have been the draftsman October 29, 1951.

The Court: You can bring that out on redirect. The objection is overruled. It is received in evidence.

Q. (By Mr. Fulwider): Now, Mr. Elem, you were aware of all this development work, weren't you, that the Wolfe Company did on the Stat-O-Seal?

A. Not all of it, sir, but most of it.

Q. At least you were aware of all the work that was done when you were working out of the Los Angeles office, and weren't away on a road trip?

A. No, sir, not all of it, but most of it.

Q. Most of it. You sat in on numerous discussions, I imagine, with Mr. Smith and others in the Wolfe Company?

A. Yes, sir.

Q. Can you describe for me some of the other types of ring that were tried by the Wolfe Company before they finally wound up with this coined type that is on the market now?

A. Well, Mr. Smith's premise has always been a mechanical [973] attachment, and I can recall a couple of them that he had actually bonded to a metal retainer. They were not satisfactory.

Q. At what stage of the development were those?

(Testimony of Robert H. Elem.)

A. The early stages of the development.

Q. About the time of this one I just showed, the one with the inside ring sticking out, which you said was just like the Duo-Seal?

A. Exhibit 110?

Q. Yes.

Mr. Miller: Object to the question as assuming something not in evidence. You assume that there is a date here.

Mr. Fulwider: There is a date on the drawing.

The Court: Yes, there is a date on the drawing.

Mr. Miller: That's the point. The witness has said this Mr. Menzell wasn't there on that date.

Mr. Fulwider: That has got nothing to do with it, Mr. Miller.

The Court: I don't know whether he said that or not. He did make a voluntary statement that could have been stricken out if the proper motion had been made. You can develop that when you get the witness back, whether or not the draftsman was employed. Suppose he wasn't employed at that time. He made the drawing for Wolfe Company. Suppose he was [974] an independent contractor?

Mr. Miller: Was this a pre-dated drawing?

The Court: I don't know whether it was a pre-dated drawing.

Mr. Miller: Am I to assume the date of the drawing? This witness wasn't called upon to identify these drawings on direct.

The Court: You are not assuming that the plaintiff is manufacturing evidence, are you?

(Testimony of Robert H. Elem.)

Mr. Miller: I have encountered a number of instances, your Honor, where draftsmen in plants have been engaged in the practice of pre-dating their drawings a year.

The Court: I know, but there is no evidence in this case of that.

Mr. Miller: I know there isn't, except the witness' statement.

The Court: You can develop all that when you get the witness back.

Q. (By Mr. Fulwider): Now, on these early types of metal washers that were not satisfactory, when was the first one of those made, to your recollection, Mr. Elem, by the Wolfe Company?

A. Of a one-piece nature? It could be made any time without my recollection, but I don't recall when the first one was made. [975]

Q. Do you recall when you first saw one of these samples or experiments that Paul Smith was conducting or that they were making at the Wolfe Company to try and get a washer that would be satisfactory for a one-piece seal?

A. No, sir, I can't.

Q. You don't recall when you first saw one of those? A. No, sir.

Q. You mentioned Paul Smith felt that the best way to attach the rubber to the metal was by some mechanical means? A. Yes, sir.

Q. That had always been his position, hadn't it?

A. I would say it has always been his position.

(Testimony of Robert H. Elem.)

Q. Did Mr. Smith ever propose, to your recollection, just cementing the rings into the metal?

A. No, sir. I don't recall.

The Court: Mr. Fulwider, may I ask you a question?

Mr. Fulwider: Yes, your Honor.

The Court: The fact is, now, that Wolfe Company does use a mechanical process for attaching the rings.

Mr. Fulwider: That's right, that's what it amounts to, because they mold the rubber through those little holes.

The Court: No vulcanizing?

Mr. Fulwider: I imagine there is a certain amount of vulcanizing, because I think whenever you cure rubber—I am not really positive on that.

The Court: Are you an engineer?

Mr. Fulwider: Yes, but not a rubber engineer.

The Court: As far as I know from the testimony of the plaintiff's witness, it is purely mechanical. They use a die with a lot of force to force the rubber in.

Mr. Fulwider: That is what they rely on, yes.

The Court: The rubber may be hot and there may be a certain amount of adhesion to the metal, but whether that is vulcanizing or not, I don't know.

Mr. Fulwider: I am not really sure. I was under the impression vulcanizing is a rather broad term. Certainly, we don't have any adhesive or primer or whatever it is, like Duo-Seal has to try and bond it.

(Testimony of Robert H. Elem.)

Can we take the recess now, your Honor?

The Court: Yes, we can take the recess now.

Court will recess until 15 minutes after 11:00.

(Recess.) [977]

Q. (By Mr. Fulwider): Now, Mr. Elem, as I recall your testimony just before the recess, it was to the effect that you were not sure when you saw the first experimental rings that the Wolfe Company made up for this one-piece seal?

A. That is right, sir.

Q. And I believe there were a great many of those experimental rings made around there at different times? A. Yes.

Q. Could you have seen some of those experimental rings in 1951, concerning the date of that Lock-O-Seal drawing, Exhibit 110, as in 1951?

A. 10-19-51, no, sir, I don't believe so.

Q. You don't know whether you saw them in '51 or '52?

The Court: No.

Mr. Fulwider: You say you saw them in 1952.

The Court: Now, he said he saw them in 1952.

Mr. Fulwider: That is correct, he saw them in 1952.

Q. I mean is it possible you saw them in 1951, also, the latter part? A. No, sir.

The Court: Everything is possible; everything is possible.

Mr. Fulwider: I think it goes to the witness' knowledge. [978]

The Witness: Allow me to elaborate just a mo-

(Testimony of Robert H. Elem.)

ment here. We were located on Mississippi Avenue in 1951 and moved to Eastham Drive with greater facilities for manufacture in 1952.

Q. In what part of 1952, can you tell me?

A. Yes, sir. We moved in in January, 1952. I predicate it on the lack of equipment in the Mississippi installation. It would have been almost impossible to have seen a one-piece device developed at that time.

The Court: You say you moved to the Eastham Avenue address in January of 1952?

A. Yes, sir.

The Court: You are sure of that date?

A. Yes, sir.

Q. (By Mr. Fulwider): Did the Wolfe Company make any of these experimental washers themselves for the one-piece? Did they stamp them out themselves?

A. Pacific Cut Washer was making all their washers up until the time they went to Eastham Avenue.

Q. I know that Pacific Cut made their production washers, but didn't the Wolfe Company actually stamp out these experimental ones themselves?

A. They had no stamping facilities.

Q. Were any of them made by hand or machine tools? A. It is possible, yes. [979]

The Court: May I break in?

Mr. Fulwider: Yes.

The Court: You told us they moved to the East-

(Testimony of Robert H. Elem.)

ham Avenue address in January, 1952. How do you establish that time?

A. Well, sir, it was the holidays in 1951 and it is very easy to recall a movement of that magnitude in the holidays.

The Court: Well, Mr. Smith, when he was on the stand the other day, testified they moved in September or October, 1951.

The Witness: Well, we celebrated Christmas at Mississippi Avenue.

The Court: Are you sure of that?

A. Yes, sir. They may have started moving in, but the whole facilities did not get in there until after the first of the year.

The Court: All right.

Q. (By Mr. Fulwider): Now, in the Mississippi Avenue plant, did they have any machine tools or equipment with which they could make these experimental washers?

A. It is possible they had a small lathe as I recall.

Q. For experimentation, there could have been a lathe there at the Mississippi plant?

A. It is possible. [980]

Q. Did you have any equipment at the Mississippi plant for molding the rubber or making experimental molds there with which they could mold rubber into those experimental rings, the one-piece?

A. They had a small Preco Press, yes, sir.

Q. So they could have molded the rubbers into

(Testimony of Robert H. Elem.)

the rings, to the one-piece washers in the Mississippi plant? A. Yes.

Q. Now, if they did develop that they had moved to the Eastham plant in September of 1952, then your testimony would be, I assume, that you could have seen these experimental rings—I mean in September, 1951, you could have seen these experimental rings that we have been discussing in 1951, couldn't you? A. No, sir. [981]

Q. I take it from your testimony that they were made very shortly after the move to Eastham. You say they moved there in January 1952, and you told us here this morning that you remember seeing numerous of these experimental metal rings for the one-piece in the early part of 1952, so I take it from that it was right after the move.

A. I think you are presuming, but it could have been several months after we moved to the Eastham facility.

Q. Could have been several months or could it have been one month, you are just not sure?

A. Yes, sir, that's right.

Q. As a matter of fact, some of them could have been made in the Mississippi plant?

A. Could have been, but I didn't see them there.

Q. You don't recall? A. No, sir.

Q. But you are not sure?

A. Yes, sir, I am sure.

Q. Your testimony this morning as to the date of the conference with Mr. Kerley as being in the early part of 1952 is based entirely on the fact that

(Testimony of Robert H. Elem.)

you think the plant was moved to Eastham in January 1952?

A. Sir, I don't think. I know it was moved there in January 1952.

Q. How long does it take, if you know, to make up experimental [982] tooling sufficient to make a few of these metal rings for the one-piece?

A. It depended on how rapidly you want to get them out. You can make them in five days, you can make them in 45 days, you can make them in 90 days.

Q. I am thinking in terms of experimental tooling.

A. Experimental tooling?

Q. Not production tooling.

A. Not less than 45 days.

Q. Not less than 45 days. You are thinking in terms of dies to stamp the rings?

A. I am thinking of the molds, to mold the rubber into place.

Q. Single cavity?

A. Yes.

Q. After you left the Wolfe Company, you worked for Rubber Teck, did you not?

A. No, sir.

Q. You worked for Randall Associates?

A. Yes, sir.

Q. That was partially owned by Mr. Karres, I believe.

A. Mr. Karres, and another Mr. Karres, who is his brother, two Mr. Siamases and myself were officers in the corporation formed, called Randall Associates.

(Testimony of Robert H. Elem.)

Q. And that corporation sold Duo-Seals, as I recall it? [983]

A. In Seattle, only.

Q. How long were you associated with Randall Company?

A. November, 1954 until March of 1955.

Mr. Fulwider: That's all I have at this time, your Honor. I would like a chance to talk to Mr. Smith during the noon hour and have this gentleman come back.

The Court: All right. Will you remain at least in call so you can be called back to the stand?

Mr. Miller: The witness told me during the recess he was behind on his Christmas shopping. Could he be excused from the court with the understanding he can come back at 2:00 o'clock?

The Court: Yes.

The Witness: Your Honor, I would just as soon get it over with and do my Christmas shopping afterwards.

The Court: All right. You will stay in attendance on the court then until after the noon recess.

Mr. Miller, do you have any questions now?

Redirect Examination

Q. (By Mr. Miller): When was the first time that you saw a one-piece seal?

The Court: Mr. Miller, could I suggest you postpone any further examination of this witness until after Mr. [984] Fulwider has completed his examination?

(Testimony of Robert H. Elem.)

Mr. Miller: Very well.

The Court: Otherwise you may be duplicating and time is of the essence here. I don't want you to ask the questions twice.

Mr. Miller: Very well. I will withhold any further redirect of this witness at this time.

* * * * *

PAUL A. KARRES

recalled as a witness by and on behalf of the defendants, having been previously duly sworn, was examined and testified further as follows: [985]

* * * * *

Direct Examination

Q. (By Mr. Miller): I show you Exhibit 9. Can you tell from that exhibit when it was that you first gave publicity to the fact that you were going to call your seals Duo-Seals?

A. Yes, sir. The publicity shows May and we had to submit it approximately a month prior to this date.

Q. That is the copy for that?

A. The copy of this ad to be submitted to get into the particular magazines that we intended to advertise in.

Q. That was May of what year? A. 1953.

Q. You had this publicity appear in which magazines or publications?

A. Excuse me. This is 1954. I must be a little off.

Mr. Fulwider: I wondered.

(Testimony of Paul A. Karres.)

The Witness: Let me go over this once more, please. Yes, the date was wrong. 1954.

Q. (By Mr. Miller): What sort of publications are those that this publicity appeared in?

A. Well, they are Equipment and Materials, Aviation Age, Production Design and Development, Petroleum Equipment, New Equipment Devices, Heating, Piping, Air Conditioning. [986]

Q. Are those of national distribution, do you know? A. Yes, they are, sir.

Q. When was the copy for that supplied with reference to the date of publication?

A. Possibly around April of the same year.

Q. That would be a month or two months prior to the date of issue?

A. Definitely. You cannot get into the magazine without your copy being approved and waiting your particular time.

Q. What were the objections to Lock-O-Seals that caused Rubber Teck to develop the Duo-Seals?

A. Principally the mechanics working applying, putting on just the washer without the rubber ring, and if they should put the rubber ring on, at times they would probably cock the washer. It wouldn't seal effectively. They had various trouble in the field, as I understand, of not self-centering, and if the rubber was pushed up against the—when you place the rubber in, you would have possibly more rubber on the bottom than you would the top. They would never self-center.

Q. Was there any objection with relation to

(Testimony of Paul A. Karres.)

maintaining tolerances, that is, keeping to your nominal sizes, so to speak?

A. I am sorry. I am not qualified to answer that particular question.

Q. Why weren't the Duo-Seals put on the market as soon [1987] as you developed them?

A. Well, principally because the Franklin C. Wolfe Company was our representative and also the Kerley contract, which we didn't want to break.

Q. When you say the Kerley contract, you have reference to——

A. Which Kerley had with Franklin C. Wolfe Company, independently of Rubber Teck, but we were working orally under the contract and we just showed it to Wolfe Company for evaluation and they were to take it on and sell it. We weren't interested in going into the selling business at that time, until they broke the contract with us on the sales.

Mr. Fulwider: I object and move to strike the last part of that about breaking the contract.

The Court: It may go out.

Q. (By Mr. Miller): Did the Wolfe Company sell other rubber goods that you were capable of manufacturing during 1953?

A. I definitely had seen some in their factory.

The Court: Just a minute.

Mr. Fulwider: I object. I can't see what materiality that has to this proceeding.

(Testimony of Paul A. Karres.)

The Court: I don't know what you are trying to establish, Mr. Miller.

Mr. Miller: The fact that the Wolfe Company did finally violate their exclusive sales agreement and that caused these people to reorient their attitude.

The Court: You are asking this witness a question: Could certain things happen? I am going to sustain the objection upon the ground you are asking for an opinion here.

Mr. Miller: I don't think my question was "could." Did.

The Court: You are still asking for an opinion. You asked, did they sell something that could have been manufactured by Rubber Teck? That is the question, as I remember.

Mr. Miller: That is correct.

The Court: But you used "could have been manufactured."

Mr. Miller: He knows the facilities that Rubber Teck had for manufacturing rubber goods at that time.

The Court: Let's don't waste time arguing. I have ruled that it is calling for a conclusion.

Q. (By Mr. Miller): What are the advantages of Duo-Seals over the Lock-O-Seals? [989]

The Court: We have gone into that, Mr. Miller, with about two or three witnesses. This is just cumulative, is all.

Mr. Miller: I don't know to how much extent

(Testimony of Paul A. Karres.)

it is scattered through the record, but I will withdraw the question.

Q. Does it make any difference what the initial shape of the rubber is as long as the rubber is above and below the metal before applying pressure and after the bolt is tightened up there is no extrusion of the rubber over the metal?

Mr. Fulwider: I object to that, your Honor. There is no showing—in fact, the showing is the other way, that this man is not an expert.

The Court: Overruled.

The Witness: I would say there would be no difference in the shape of the rubber.

The Court: In other words, as far as you are concerned, the rubber could be round, rectangular or square.

The Witness: Yes.

Q. (By Mr. Miller): Are you acquainted with Dyna-Seals? A. Yes, I am.

Q. How long have you been acquainted with them?

A. Oh, approximately since 1949 and 1950.

Mr. Fulwider: I object to any discussion or questions concerning Dyna-Seals. He says he wasn't familiar with the Dyna-Seals until 1949 and 1950. Our patent issued in 1946, [990] so this can't be prior art.

The Court: I think your objection is premature. I don't know the purpose of this yet. It may be that the next question would indicate he can't answer.

(Testimony of Paul A. Karres.)

Q. (By Mr. Miller): I show you two seals and ask you whether or not you recognize these.

A. Yes, I recognize these as Dyna-Seals.

Mr. Miller: I will offer these in evidence.

Mr. Fulwider: I object to the offer.

The Court: Sustained. What is the purpose, Mr. Miller?

Mr. Miller: To show that the shape doesn't enter into the sealing effectiveness of the washer.

The Court: Let this witness testify. There is no testimony yet that that is not a round rubber ring. I assume you know it isn't a round rubber ring, but I don't.

Mr. Miller: I think the exhibit speaks for itself.

Mr. Fulwider: If your Honor please, what issue, what count of this case is this evidence supposed to be material to? Here is a ring made in 1949 or 1950, or at least some time later than that.

The Court: It may mean this, Mr. Fulwider. You have used a round rubber O ring and the testimony of your witnesses is to the effect that it is only a round O ring [991] that can be forced out of shape or distorted so it will fill all the voids.

Mr. Fulwider: Only the doughnut.

The Court: I asked the question, why wouldn't a square ring do just as well? Your witnesses said it wouldn't. Now, if this is a square ring, then there is some evidence that a square ring

(Testimony of Paul A. Karres.)

will perform the same thing that the round ring will.

Mr. Fulwider: Does Mr. Miller offer this merely to demonstrate that a square ring will work, or does he offer it as prior art, or how does it tie into the case?

Mr. Miller: It ties into the case in several respects. In your opening statement——

The Court: Now, just a minute here.

Is the rubber ring in this washer round?

The Witness: It has a square cross section.

The Court: It has a square cross section?

The Witness: Yes.

The Court: I will admit it only for the purpose of showing it has a square cross section. If you can tie it up in some other way, I will admit it for that purpose, also, but as far as I am concerned now, the only thing I am interested in is that here is a one-piece ring, a one-piece seal, and it uses a square ring.

Do you know whether or not this seal has been used [992] in the trade?

The Witness: They have sold millions of them.

Mr. Fulwider: Does he know?

The Witness: Definitely.

Mr. Fulwider: May I ask on voir dire how he knows?

The Witness: Yes, I will be very happy to tell you. Aircraftsman, who are now—they have gone bankrupt—ordered a numerous amount of Duo-Seals from us—let me elaborate that—ordered

(Testimony of Paul A. Karres.)

800,000, and they called back and said, "We just want 400,000 because we have 400,000 Dyna-Seals here."

Mr. Fulwider: Who said this?

The Witness: Aircraftsman.

Mr. Fulwider: Who are they?

The Witness: They were in Gardena and they were making fire bombs and drop tanks.

Mr. Fulwider: I move to strike it as strictly hearsay. He doesn't know.

The Court: Overruled. Motion denied. [993]

Mr. Miller: Among the Plaintiffs' Exhibits here, there was a brochure of Dyna-Seal. I don't know where to find it.

The Clerk: Is this admitted?

The Witness: I have one over there I brought this morning on the Dyna-Seal.

The Clerk: Is this admitted, your Honor?

The Court: It is admitted for a restricted purpose, only to show the shape of the rubber.

The Clerk: Exhibit AG.

(Said exhibit received in evidence as Defendants' Exhibit AG.)

Mr. Miller: Where are the exhibits that have not been put in evidence yet, the Plaintiffs' Exhibits?

The Court: Let me see that last exhibit.

Q. (By Mr. Miller): Are the Dyna-Seals advertised?

A. Extensively. They are also manufactured in Canada.

(Testimony of Paul A. Karres.)

Q. Do you know who makes them?

A. Precision Rubber Products, I believe it is at Dayton, Ohio.

Q. I show you a clipping and ask you whether or not this is one of their advertisements of the Dyna-Seals? A. Yes, sir, that is.

Mr. Miller: I will offer the advertisement in evidence. [994]

Mr. Fulwider: I object to the offer, your Honor. It is immaterial and irrelevant and has nothing to do with this lawsuit.

The Court: Sustained.

Mr. Fulwider, may I ask you a question?

Mr. Fulwider: Yes.

The Court: Your patent calls for a doughnut shaped ring. This Exhibit AG is a flat ring. Would you consider this as an infringement of the patent?

Mr. Fulwider: No, your Honor. As I remember it, Dyna-Seal didn't. I didn't look at that close enough to be sure.

The Court: I want to know if they used a flat ring or a triangular ring, then, you would not consider it would infringe your patent?

Mr. Fulwider: No. Definitely not.

The Court: It has to infringe your patent if it is doughnut shaped?

Mr. Fulwider: And the other claims of the patent are met.

The Dyna-Seal, as I understand from catalogs we have seen, does not infringe. Definitely it is

(Testimony of Paul A. Karres.)

a different type of seal. I would be glad to so stipulate.

The Court: Well, it has a metal washer and it has a rubber. I suppose this is an O ring. An O ring doesn't [995] have to be round in cross section, does it?

Mr. Fulwider: Well, generally, I think, but that certainly is not any O ring if it is made according to the pictures in their catalog.

The Court: All right.

Mr. Fulwider: As I say, I would be glad to stipulate that the Dyna-Seal doesn't infringe, if that will shorten things up a little bit.

Mr. Miller: I am not contending as to Dyna-Seal in this case.

The Court: Well, don't you want the stipulation? You don't have to take it, if you don't want it.

Mr. Miller: No. Except the statement here, I will accept his statement here, but I am not concerned about that.

Q. When did you first become aware of the existence of Stat-O-Seals?

A. Sometime in 1953.

Q. Did you ever make a quotation to the Franklin C. Wolfe Company to make Stat-O-Seals of 5½ or 5¼ cents apiece?

A. It never crossed my desk.

Q. You never had anything to do with that?

A. No, sir.

Q. Now, concerning the orders that you receive

(Testimony of Paul A. Karres.)

for Duo-Seals from your customers, do those orders normally specify the seals by the trade name "Duo-Seals"? [996]

A. No. The majority are by number.

Q. You merely get your part number as appears on your catalog sheet?

A. That is correct.

Q. And you say the majority do not even put the name "Duo-Seals" on them?

A. No, sir. They do not.

Mr. Miller: You may cross examine.

The Court: Now, will you restrict your cross examination to the questions that were asked this morning?

Mr. Fulwider: Yes, your Honor.

Cross Examination

Q. (By Mr. Fulwider): Approximately how many million Lock-O-Seals rubber rings did Rubber Teck sell to the Wolfe Company?

A. You said approximately, I am sure?

Q. Yes.

A. Oh, I would have no way of knowing, Mr. Fulwider.

Q. Fifty million, sixty million?

A. It could be. It could have been less. Or it could have been more.

The Court: It was in the millions?

A. Yes, there is no question about that.

Q. (By Mr. Fulwider): And a lot of millions?

A. There is no question about that. [997]

(Testimony of Paul A. Karres.)

Q. Now, you say you first heard of Stat-O-Seals in 1953. When did you first hear of one-piece Lock-O-Seals made by the Wolfe Company?

A. I never had heard of it before, until '53; I didn't know any such thing existed.

Q. And you never saw any literature?

A. Never saw any literature on it.

Q. What part of 1953 did you hear of Stat-O-Seals, first?

A. I would say approximately the middle of '53, July, June, July.

Q. Do you remember the occasion of that, acquiring that knowledge? How did you happen to hear of it? Who told you?

A. I don't recall that. I get around back East, back and forth, to the numerous aircraft companies. I don't recall now.

* * * * *

OTTO GRASS

recalled as a witness herein, having been previously duly sworn, testified further on behalf of the defendants as follows: [998]

Direct Examination

Q. (By Mr. Miller): Mr. Grass, how did you test the Lock-O-Seals that you were manufacturing for the Franklin C. Wolfe Company to determine whether or not the Lock-O-Seals were of the proper size or dimensions so that they would not extrude on the metal?

A. Between two blocks of lucite with a bolt.

(Testimony of Otto Grass.)

The Court: Is that the only way you could tell, is by actual trial and error method?

A. That was the only way. The tolerances were all mentioned on the data sheet and if we took the high of the washer and the low of the rubber, they would either extrude or not seal.

The Court: So the only way that you had to determine this was by actual hand demonstration?

A. That is right.

Mr. Miller: Did you make up any test blocks of like material to do that?

A. I made up some and we received some from the Wolfe Company, from Paul Smith I think. Somebody brought some over.

Q. Did you make them up in accordance, in the same way as these test blocks that I now show you? A. Similar to that. [999]

Q. I hand you two test blocks. What are these two test blocks made out of?

A. Lucite. Some of them call them Plexiglas.

Q. And I have in this particular one between these two blocks the Lock-O-Seal that Mr. Fulwider supplied to me earlier in the trial. Will you demonstrate to the Court how you made the tests to determine whether or not the rubber extruded over the metal in the case of your manufacturing Lock-O-Seals?

Mr. Fulwider: May I ask, does that have an exhibit number?

Mr. Miller: Not as yet.

(Testimony of Otto Grass.)

The Court: Well, let us have it marked for identification.

Mr. Miller: Mark it.

The Clerk: AH for identification.

(Said exhibit was designed as Defendants' Exhibit AH for identification.)

* * * * *

The Witness: We merely put the washer and rubber doughnut on this part (indicating), and we were quite sure that the washer here fit to the mold fairly snug and we [1000] forced this over (indicating) and applied the other part in here and tightened it up, and you could see through here (indicating) whether it extruded. We could not tell if there was insufficient rubber, but we could tell if we had too much. Then we made it as high as possible without extruding.

The Court: Now, would the extruding depend somewhat upon the pressure or the tightness of the bolt?

A. Not with this bolt. You could tighten this as tight as you want. The metal washer would restrain the blocks from going any further. Unless you use an exorbitantly large amount of force to squeeze the washer into the Lucite block.

Q. (By Mr. Miller): Can you demonstrate that with these wrenches that are here, how you did tighten that up and how did you examine for extrusion?

A. The one we had had a hexagon head and we used two wrenches to tighten it. We merely

(Testimony of Otto Grass.)

tightened them up just snug with no great force applied to it.

The Court: And then can you tell from this whether or not the rubber was extruded?

A. With a glass we would look at this and we could tell if it extruded over the washer.

Q. (By Mr. Miller): You have a Lock-O-Seal there right now. Can you tell whether or not the rubber has [1001] extruded over the washer in that case?

A. Well, it extrudes over the radius in it. The washer, when it is blanked, is different than when it is bored out, and it has a slight radius on the side where it is blanked from. This rubber extrudes into this radiused area, but not over the washer.

Mr. Lee: May I see it?

The Witness: Yes.

Mr. Fulwider: Do I understand your testimony, that this rubber in here is now extruded on this upper side?

A. It hasn't extruded over the washer; just over the radius corner slightly.

Mr. Fulwider: But it has, as I understand you to say, extruded?

A. I didn't say it had extruded. I said it has filled the void in there and also the radius part from blanking greater than the diameter of the hole.

Q. (By Mr. Fulwider): It has filled the void, but it has not extruded through it?

(Testimony of Otto Grass.)

Mr. Miller: That isn't what he said.

A. I don't know how much it extruded; I would have to have a glass to tell.

Mr. Fulwider: What I want to know is what his testimony is. Either it has extruded or it has not extruded. [1002]

A. That I don't know, unless I have a magnifying glass to see.

The Court: I don't know. There are millions of these washers made and millions of them used.

A. Yes.

The Court: And I suppose they wouldn't have been used unless they were satisfactory. Now, whether it extrudes a little or much, I don't know. I don't know as it makes a great deal of difference in this case.

The Witness: Well, your Honor, 50 per cent of them that we made extruded. Some of them didn't. We couldn't manufacture that close a tolerance.

The Court: Was any ever turned back to you because it extruded too much?

A. Yes. We had them, -10 or 3/16, considerable quantities came back even after we tested them this way and measured them, and we had to change and grind down the dies, down to 66/1000 instead of 70/1000 cross section.

Q. (By Mr. Miller): Now, I have asked you to make up a washer with a square rubber ring.

Do you want to compare it with another one?

Mr. Fulwider: My eyes aren't that good.

Mr. Lee: Mark it.

(Testimony of Otto Grass.)

Mr. Miller: I would like to have this exhibit marked for identification, but I don't want to have it tagged [1003] until we get through with it.

Mr. Fulwider: As AI?

The Clerk: AI for identification.

(Said exhibit was designated Defendants' Exhibit AI for identification.)

Q. (By Mr. Miller): Is this the washer with the square rubber or rectangular rubber ring that you made up? A. Yes, it is.

Q. Did you make that up personally?

A. I did. [1004]

Q. Is the cross-section of that rubber rectangular? A. It is rectangular, yes.

Q. Do you recall what the thickness of the rubber is as compared with the thickness of the washer? A. About five-thousandths greater.

Mr. Fulwider: Than the thickness?

The Witness: Than the thickness of the metal washer.

The Court: Now, may I caution counsel and the witness that we are using terms here that are minute in quantity and it is important that the reporter get them and the reporter can't get them if there are two or three people talking at the same time. You want a good record here. You can't come in and tell me that you have got a poor record and the reporter didn't get what was said. The reporter can't get what was said if two or three people talk at the same time.

Mr. Miller: Now, where was I?

(Testimony of Otto Grass.)

(Record read by reporter.)

Q. (By Mr. Miller): Will that rubber extrude over the surface of the washer if you put it in on a bolt and compress it?

A. I would have to try it. I wouldn't know.

Q. Suppose we use this same Exhibit AH.

The Court: Now, you want to tear that exhibit to pieces and then we won't have the exhibit.

Mr. Miller: I can use another block. I thought we [1005] would use the same blocks so there wouldn't be any question about it. We have another pair of them.

The Court: I suppose, Mr. Miller, you are trying to demonstrate that the square ring when pressure is put on will be deformed so that it will fill the entire void, all the area. Is that what you are trying to do?

Mr. Miller: Yes. And this, in my opinion, the square with the square is made exactly in accordance with the disclosure of the British patent—with the square rubber ring, and that this sample here is made in accordance with the disclosure of the British patent that we are relying on.

Mr. Fulwider: May I inquire if that cross-section before it is compressed is truly square? I think it was once called square and once rectangular. Is it a square?

Mr. Miller: I will ask the witness.

The Witness: I wouldn't know whether it was square any more than I would know that the O ring was round in the Lock-O-Seal.

(Testimony of Otto Grass.)

Q. (By Mr. Miller): But it was intended to be square or molded to be square, is that it?

A. No. It is approximately five-thousandths larger than the metal washer.

Q. And what is the width of it, or do you know?

A. The width is the o.d. of the metal washer—or the i.d. of the metal washer and the i.d. of the bolt. I would [1006] have to figure out whether it is square.

The Court: It couldn't possibly be square.

The Witness: No, it is not exactly square.

Q. (By Mr. Miller): It is slightly a departure from the square, is that it? A. That's right.

Q. You have tightened these two blocks on that rubber and do you have any extrusion that you can see here over the metal?

A. Yes, I would say there was a slight extrusion here.

Q. Very slight? A. Very slight on this side.

Q. On one side only or both sides?

A. It looks more on one side than the other to me, but without a more powerful glass, I couldn't tell.

Q. I wish you would bear in mind the appearance of that extrusion that you have with a square rubber ring and substitute for that—is this a quarter-inch Duo-Seal? A. Yes.

Q. Will you put the quarter-inch Duo-Seal on the bolt, apply the blocks, and tighten them up?

The Court: Have we got two seals there now?

Mr. Miller: Only one in between the blocks.

(Testimony of Otto Grass.)

The Witness: That extrudes slightly. I don't know how much. [1007]

Q. (By Mr. Miller): Is that about the same as the square extrudes?

A. As near as I can see, yes.

Mr. Miller: I will offer in evidence the second pair of blocks, the bolt and the nut and the Duo-Seal that is between them as our next exhibit.

Mr. Fulwider: I object to the offer. No proper foundation of what these are supposed to show.

The Court: Overruled.

Mr. Fulwider: There is no testimony that these blocks are supposed to simulate any condition in the trade. We don't even know, as far as the testimony goes, how these blocks are made.

The Court: Overruled.

The Clerk: I want to know where the AI Exhibit is. Is this it?

Mr. Miller: Yes, that is the one I didn't want you to tie up until we got through with it.

The Clerk: I have to know where they are.

Mr. Fulwider: May it be understood, your Honor, that these are merely offered to illustrate the witness' testimony?

The Court: That's right, they are only offered for the purpose of illustrating the witness' testimony.

Mr. Miller: I will offer this as our next exhibit. [1008]

The Court: This may be received in evidence.

(Testimony of Otto Grass.)

The Clerk: AH and AI are marked for identification.

The Court: Do you want them in evidence.

Mr. Miller: I offer them in evidence.

The Court: They may be received in evidence.

The Clerk: AH and AI.

(The exhibits referred to were received in evidence and marked as Defendants' Exhibits AH and AI.)

The Court: And the other may be received.

The Clerk: The new one is AJ.

(The exhibit referred to was received in evidence and marked as Defendants' Exhibit AJ.)

Mr. Miller: This is a pair of blocks with a quarter-inch Duo-Seal compressed between them, lucite blocks. [1009]

* * * * *

Redirect Examination

Q. (By Mr. Miller): Mr. Grass, what were the difficulties involved in maintaining proper proportions between the metal ring and the rubber ring in the Lock-O-Seal?

A. Well, when you had the high dimension on the I.D. of the washer and the high dimension on the O.D. of the ring, you would almost always get a protrusion.

Q. Well, in the Lock-O-Seal construction you have what variables?

A. You have the I.D. of the washer, the thickness of the metal, you have the O.D. of the rubber ring, the I.D. and the cross section of the rubber ring.

(Testimony of Otto Grass.)

Q. Now, in the manufacture of the Duo-Seals, do you eliminate any of those variables?

A. We eliminate all but two.

Q. And which are those two? [1010]

A. The I.D. of the rubber ring and the O.D. of the bolt.

Q. Can you explain how you eliminate those variables in the Duo-Seals?

A. Well, the rubber is laid into the mold.

Q. The rubber is?

A. I mean the metal washer is laid into the mold and closed and the rubber is forced in. The I.D. of the washer acts as part of the mold, and regardless of the thickness of the metal washer, we mold exactly so much rubber on each side.

Q. In other words, regardless of its thickness or how thin the washer may be, the amount of rubber or the distance at which the rubber protrudes above the top surface of the washer and protrudes below the bottom surface of the washer remains constant? A. Remains constant, yes.

Q. And where the I.D. of the washer is larger or smaller than nominal, is that taken up, that difference taken up by the rubber?

A. That difference is taken up by the rubber, yes.

Q. If it is larger, you have a little wider rubber?

A. We have more rubber.

Q. To the wall of the washer?

A. That is right. [1011]

Q. And if the I.D. of the washer is a little bit

(Testimony of Otto Grass.)

lower, then you don't have quite as much rubber in the ring? A. That is right.

Q. Did you ever attend a conference at which Mr. Paul Smith was present and he proposed making, your making molds for any Stat-O-Seals?

A. I never did.

Q. Did you design your own molds for making Duo-Seals? A. I did. [1012]

Q. And you made them yourself?

A. I made the first one.

Q. Did Paul Smith at any time ever disclose to you a proposed mold for making Stat-O-Seals?

A. Not that I can recall.

Q. What would you say are the most popular sizes for the sealing devices of the character of Duo-Seals and Lock-O-Seals?

A. The most popular size that Rubber Teck has is $1/4$, $3/16$, and $5/16$.

Q. Of an inch? A. Of an inch, yes.

Q. Did you make the first transfer molds for the Lock-O-Seals? A. I did.

Q. When did you do that?

A. In 1949, right after I came with Rubber Teck.

Mr. Miller: You may cross examine.

Cross Examination

Q. (By Mr. Lee): Mr. Grass, did you testify earlier today that Mr. Smith brought over test blocks to you?

A. I didn't say Mr. Smith. I said we got them

(Testimony of Otto Grass.)

from some place. I don't know where. I said possibly Paul Smith. [1013]

Q. Possibly Paul Smith gave them to you?

A. Yes.

Q. This washer with a square ring in it—which one is it?

Mr. Miller: I think it is still in the last block.

Mr. Fulwider: Exhibit AI.

Q. (By Mr. Lee): Referring to Exhibit AI, Mr. Grass, this is a ring with a rectangular section?

A. Yes, it is.

Q. Referring to that Exhibit AI, Mr. Grass, did you ever test it to find out if it would seal under pressure?

A. I did not.

Q. Is the device AI as good as the Duo-Seal?

A. I haven't made any comparison test.

Q. What would your opinion be?

A. I would say yes.

Q. You would say it would be as good?

A. As good, yes.

Q. Referring to this British patent, Fig. 5, is this the way the Exhibit AI looks?

A. No.

Q. It is different than that?

A. It is slightly different.

Q. What is different about it?

A. Well, they have a step here on the inside of this [1014] part. On the one I made up, it is square or rectangular, protrudes above the washer.

Mr. Miller: Could I have the last two or three questions read back and the answers? [1015]

The Court: May I see that exhibit, please?

(Testimony of Otto Grass.)

Go ahead.

Mr. Miller: Could I have the last two or three questions read back, and the answers?

(Record read by the reporter.)

Q. (By Mr. Lee): Have you ever examined the one-piece Lock-O-Seal or Stat-O-Seal, Mr. Grass?

A. I have looked at it, yes.

Q. I show you Exhibit No. 82, Mr. Grass. Is that the kind of a Stat-O-Seal or one-piece Lock-O-Seal that you examined?

A. That is a Stat-O-Seal similar to the one I have seen before.

Q. I believe you said there were certain advantages in the Duo-Seal over the two-piece Lock-O-Seal, is that correct? A. That is correct.

Q. Would those same advantages be found in this Stat-O-Seal?

A. Yes, I imagine the same; providing their mold is made so that it will allow for the different thicknesses of the washer, it would be the same.

Q. These transfer molds you made in 1949, did they have anything to do with making one-piece seals? A. They made O rings. [1016]

Q. Nothing to do with one-piece seals of any kind? A. No, sir.

Mr. Lee: That is all, Mr. Grass.

The Court: Any other questions?

Mr. Miller: Just a few.

Redirect Examination

Q. (By Mr. Miller): How does the rectangular, Exhibit—

(Testimony of Otto Grass.)

The Clerk: The Judge has it up there; it is up there (indicating witness stand).

Q. (By Mr. Miller): —AI compare with the showing made in Figure 2 of the British Patent?

A. On Figure 2 it looks like it is supposed to be a small step in there, smaller——

Q. (By Mr. Miller): A step between the rubber and the metal? A. Yes.

Q. Is that what you have reference to?

A. No.

The Court: Keep your voice up. Everybody has to hear you. And I am sure they can't hear you.

The Witness: Well, it looks to me like this part in here (indicating) shows a smaller cross section than it does next to the ring.

Q. (By Mr. Miller): Well, here in Figure 2, the [1017] rubber or inner ring is a little thicker vertically than the outside member 8. Do you understand it that way, interpret the drawing that way? Just look at Figure 2.

A. It looks to me like the rubber there is thinner than the metal ring.

Q. Well, which is the rubber?

Mr. Fulwider: I object to counsel testifying, your Honor. I think the witness has explained that.

The Witness: I am a little bit confused on this drawing here. I have the rubber and the metal confused here.

This is the rubber on the inside (indicating).

Q. (By Mr. Miller): All right, now, that has a reference character. What is it?

(Testimony of Otto Grass.)

A. That is—where is the reference?

Q. Well, there are only two reference characters in that figure, 7 and 8.

A. They have an 8 which is the metal retainer and 7 is the rubber.

Q. All right, now, which was thicker?

A. The 7 is thicker.

Q. Is that the way you made Exhibit AI?

A. That is the way. I was confused with the drawing before.

Mr. Miller: That is all. [1018]

Mr. Fulwider: No more questions.

Mr. Miller: I will call Mr. Wolfe under Section 43(b).

Mr. Lee: Mr. Smith?

Mr. Miller: Mr. Smith. I beg your pardon.

PAUL SMITH

called as a witness herein by the defendants, having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Miller): Are you acquainted with Dyna-Seals, Mr. Smith?

A. I have seen a few of them, yes.

Q. And how long ago have you seen them?

A. Several years. I don't know exactly. Two or three.

Q. Do you recognize this exhibit AG as being samples of Dyna-Seals?

A. (The witness examines said exhibit.) They

(Testimony of Paul Smith.)

are not the same as the ones I have seen previously, no.

Q. What is the difference, if any?

A. The internal recess in the rubber forming two little lips instead of a flat surface as this appears to be. I just looked at the big one.

(The witness further examines said exhibit.)

I would not recognize this as the Dyna-Seal from what I have [1019] known previously.

Q. Are you acquainted with these Dowty Seals?

There is a brochure we had this morning. They were Plaintiffs' Exhibits, unoffered as yet.

A. I would not recognize these as Dyna-Seals, compared to what I have seen previously, primarily from the advertising art. [1020]

The Court: I think the last question was, are you familiar with the Dowty seal?

The Witness: I am sorry. Yes, I believe they are the same. That is my only association.

Q. (By Mr. Miller): The Dynaseal and the Dowty seal are both the same?

A. That is my impression.

Q. I show you Plaintiffs' Exhibit 33 for identification and ask you whether or not you recognize that as being a brochure of the Dowty seal.

A. It says so. I have never seen it before. Does that answer your question?

Q. You have never seen the brochure before?

A. That's right, not the brochure.

Q. Have you seen brochures of the Dowty seal similar to that?

(Testimony of Paul Smith.)

A. I have never seen a brochure of the Dowty seal, no.

Q. I show you the diagram in the lower left-hand corner of the second page of this exhibit. Does that show the nature of the construction of the Dowty seal that you are familiar with?

A. I don't know that I have ever seen a Dowty seal.

Q. Would that illustrate the type of construction of Dynaseal that you saw?

A. Roughly, yes. [1021]

Mr. Miller: I will offer the exhibit as illustrative of the witness' testimony.

Mr. Fulwider: To illustrate the testimony?

Mr. Miller: Yes.

The Court: It may be received in evidence. Has it been marked?

Mr. Miller: Not yet.

The Clerk: It will have to take a defendants' number now since they are offering it.

Mr. Miller: It was Exhibit 33.

The Clerk: It will have to become your number now. Defendants' Exhibit AK.

(The exhibit referred to was received in evidence and marked as Defendants' Exhibit AK).

[See Book of Exhibits.]

Q. (By Mr. Miller): I show you Exhibit 15. You recognize this exhibit, do you? A. Yes.

Q. Were those exhibits as they stand now distributed to the trade?

(Testimony of Paul Smith.)

Mr. Fulwider: There is quite a number of pages in there.

The Witness: Some of them weren't, some of them were.

Q. (By Mr. Miller): Can you tell me which ones were distributed to the trade? [1022]

A. I would say those that are printed by printers were distributed. Those that are blueprints may or may not have been distributed. Some of the dividers were not distributed, or the case.

Q. The case wasn't. Do you recall when those were distributed to the trade, that is, these printed pages that form part of Exhibit 15?

A. No, I couldn't say. Some of these are quite old. I would have no recollection unless the date is on them.

Q. Would you know whether or not they were distributed to the trade prior to the time this lawsuit was started or the complaint filed?

A. This page marked with a red X, I am sure it was distributed long before that, because we had changed the name to Stat-O-Seal long before the lawsuit.

Q. How about these other pages on Lock-O-Seal, Gask-O-Seal, Termin-O-Seal?

A. There is nothing on these to refresh my memory. I can't say. There has been no change that I can recall that places any date.

Q. Were copies of Exhibit 1 distributed to the trade during the year 1949 and 1950?

A. Not to my knowledge, not after I went to

(Testimony of Paul Smith.)

work there. They may have been beforehand, I can't say.

Q. When you started to work there at Franklin C. Wolfe [1023] Company, that was when?

A. The latter part of 1949.

Q. At that time how were your customers ordering the seals that they wanted? What did they use to order from?

A. Part numbers had been designated for the parts. Similar sheets with possibly changes in dimensions or tolerances were made up. I believe the first ones I saw had Industrial Specialties yet. Then we made our own, similar to this in nature—Roto printing I guess you call it.

Q. You didn't take Exhibit 1 and just copy the dimensions across and get out a data sheet that was distributed to the trade?

A. No, we didn't. There were sizes on here that we didn't want to market, that weren't popular, we didn't want to be obligated to make, and there were dimensional changes or tolerance changes about that time. That was basically a manufacturing print, as we considered it.

Q. Do you know when the current catalog of Franklin C. Wolfe Company was published, Exhibit 109?

A. There is nothing here to indicate it. We didn't publish this as a catalog. We might add a new item and put it in at any time or change one. We might buy 5,000 of these and 300 of these and change as they went along. It doesn't come to us as

(Testimony of Paul Smith.)

a bound catalog. Our salesmen put them together on demand. [1024]

Q. Were some of these sheets, to your knowledge, printed up and published since this lawsuit was started?

A. I don't remember when this lawsuit was started.

Mr. Fulwider: That's a good question. I am not sure exactly when we started, either.

Q. (By Mr. Miller): I thought possibly that would stand out in your memory better than anything else. A. No, I can't say.

Q. You wouldn't be able to pinpoint the date of publication of any of the pages in this catalog, is that it?

A. No. The only dates shown in printing on here are changed. If we buy another thousand, they change the copyright date and the printing date. I don't know when the first issue of this page may be without changes.

Q. In the case of this particular page on Lock-O-Seal, there is a date up here on top 8/1/54. Is that the printing date?

A. That is the date that the advertising man sent this out to the printer approximately, yes, but it may be just reprinting and they would change the date when they reprint. That is what leaves me fouled up.

Q. I show you Exhibit 87. From a visual inspection of this exhibit, can you tell me what was the original shape of the rubber ring in that exhibit?

(Testimony of Paul Smith.)

A. No. [1025]

Mr. Miller: That's all. Thank you.

Mr. Fulwider: No questions.

(Witness excused.)

Mr. Miller: I believe, Mr. Fulwider, you are going to stipulate that Wolfe——

Mr. Fulwider: You can put the Wolfe deposition in, if you want.

Mr. Miller: ——testified at page 40 of his deposition.

“Q. Referring back to Exhibit 13, I notice you have on this label the designation Lock-O-Seal, Gask-O-Seal, Stat-O-Seal, Bolt-O-Seal, Valv-O-Seal, Riv-O-Seal, Termin-O-Seal, Strip-O-Seal, Banjo-seal. Did you ever use the trademark Duo-Seal? “A. Not to my knowledge.”

Mr. Fulwider: We so stipulate.

Mr. Miller: And if he were now called, he would testify the same way?

Mr. Fulwider: Yes. [1026]

Mr. Miller: Now, if the Court please, in the interests of saving time, I would like to avoid calling an expert to go through the prior art that has been placed here. There are a few cases to the effect that if we don't have an expert to explain the prior patents, that the Court should ignore them.

In this case, I think that the Court is perfectly capable of reading and evaluating the patents that are in that book, and the point is that I am perfectly willing to submit those patents without an

expert's testimony, but I don't want to be penalized for not having an expert, and in the interests of saving time, I would like to submit them without an expert explanation.

To convenience the Court, I might state the patents that I am principally relying on in that book are the British Patent, the two Hart Patents, the Seligman Patent, and the Dowty Patent.

The Court: Well, Mr. Miller, I have read a good many patents, and I am very doubtful if I could read a patent and get out of it the same as you can or the same as an expert can. You can tell me their words and you think that they mean a different thing.

Now, I don't know whether I can find a distinction or not.

Now, for instance, I hoped some expert, that you would [1027] call on an expert, that I could ask him to tell me what is the difference between Claim 1 and Claim 2 of the patent in suit. I have been looking at Claim 1 and Claim 2——

Mr. Miller: Claim 2 specifies——

The Court: And if I had to make a ruling as to Claim 1 and Claim 2, I would say that they call for the same thing by using a few different words; I don't see any difference between Claim 1 and Claim 2. Mr. Fulwider says that they agree that Claim 2 has not been infringed. Now, if Claim 2 has not been infringed and if it is the same as Claim 1, then, Claim 1 has not been infringed.

Mr. Fulwider: No. That is not our position, Judge.

The Court: You said awhile ago that you don't claim that Claim 2 is infringed.

Mr. Fulwider: That is right.

Mr. Miller: Claim 2 has one limitation. Against the side or top of the Lock-O-Seal there is an additional washer.

The Court: That is why I say I don't know whether I am capable of reading these patents, because I can't find the limitation. I have gone over it and gone over it and as far as I am concerned, they mean one and the same thing, so you are taking a chance when you ask me to read these patents and come to my own conclusion.

Mr. Miller: Well, I can't produce an expert here today on this, and that being the case, I will just have to ask [1028] for a continuance.

The Court: Well, is that your last witness?

Mr. Miller: Yes.

The Court: You just have one expert, is that your last witness?

Mr. Miller: This is my last witness, except for the expert. Now, I could point out these things I believe to you. In other words, actually, I have always regarded a patent expert here really somewhat as a foil for the attorney, to answer back almost what the attorney wants him to say in reference to the prior art, or merely as a vehicle for letting the attorney emphasize what he finds in these patents.

The Court: Well, I might say to both sides that I am going to take this under submission and I expect each of you to file some briefs as to what you think the evidence discloses.

Mr. Miller: Well, I think I could point it out very well in the brief, without the testimony of an expert.

The Court: Of course, the prior patents are in and you can point it out in a brief and I can look at it. I won't say that I will agree with your interpretation.

Mr. Miller: Well, I will have to take my chances on that, and as a matter of fact, usually I think that is what happens when we are up before the Circuit. [1029]

The Court: Of course, if you brought an expert here, I would not necessarily take his opinion, I might disagree with him.

Mr. Miller: That is true. So, in the final analysis, I think we come back to what the prior art patents actually show and say.

The Court: Well, one of the things I am particularly interested in in this case is the claim that is made. In Claim 1 it says a "doughnut shaped ring" and in Claim 2 it is a circular cross section. And evidently these claims, this patent is based upon the theory that the rubber ring had to be round in contour and round in cross section, and I think I asked several questions, what difference would it make, whether it was round or rectangular. And the witnesses for the plaintiffs say the round one is the one that works, that the others don't work. Now, this Dowty Patent that you just introduced upon that was brought to the attention of the witness, against the patent here, and the patent claim says, "trapezoidal cross section", and the dia-

gram indicates, that is, the diagram in the Exhibit AK indicates the rubber ring and instead of being a square rubber ring, it appears to have part of it hollowed out. In other words, there is a reverse circle, part of it is a reverse circle, the circle going the other way.

Mr. Miller: That would seem to be another design, [1030] again, that is in that brochure.

The Court: And then I saw a diagram here that indicates——

Mr. Fulwider: Well, I think I ought to call your Honor's attention to the fact that there is no evidence of that Dowty brochure being prior art in the case, as far as I know.

The Court: That is right, it isn't. It isn't, and of course, the patent was filed in 1945.

Mr. Miller: That has an effective filing date, though, as of May 3, 1944.

Mr. Fulwider: We differ on that; that is one of the bases for our contention that the Dowty Patent is not prior art either and not properly admissible.

The Court: Well, you look at page 3 of the brochure which shows a cut out ring, and the rubber in that ring is certainly not square. It is wider on the inside than it is at the place where it is bonded to the metal. In fact, what is done, I think, is probably taking two right angled triangles there—well, it wouldn't be two right angled triangles at all—it certainly isn't a round ring, and it isn't a triangular ring. It is an angular ring in which the inner side of the rubber is much wider than the outer side, the side that is connected with the ring.

So, I don't know. Maybe the patent in suit depends [1031] upon the fact that you have a doughnut shaped ring and if you have a doughnut shaped ring—O rings have been used from time immemorial and an O ring certainly is a doughnut shaped ring, as far as I am concerned.

Mr. Fulwider: That is right.

The Court: I don't know the difference between an O ring and a doughnut shaped ring.

• Mr. Fulwider: Certainly an O ring is doughnut shaped.

The Court: So I think you ought to have an expert here.

Mr. Miller: Well, I will have to ask for a continuance, then.

The Court: Well, I expected this case to go over until one day next week. I have one day next week I can hear you on.

Mr. Miller: I don't want this on the record:

(Discussion off the record.)

Mr. Miller: Possibly I could adjust to it. What day is available next week?

The Court: Well, Mr. Miller, I am not an expert in patent law. Now, I assume that you are.

Mr. Miller: Thank you for the kind compliment.

The Court: But when I come to read patents, it is like reading Greek, I got to have somebody explain to me and point out the things that are important. [1032]

Now, for instance, you say there is something different, you claim there is something different be-

tween Claim 1 and Claim 2, and if I were writing an opinion in this case, I don't know whether I would find any distinction between Claim 1 and Claim 2. There may be one, but I just can't see it.

Mr. Fulwider: Claim 2 has one additional element. It is directed specifically to Figure 4 of the drawing and includes the standard washer shown in that drawing.

Line 3 of Claim 2, which is line 24 on page 3 of the patent here, where the claim starts, you will notice the claim says, "a head and a shank, a standard washer having a central opening"——

Now, Claim 1 doesn't have that standard washer, and because they do not sell the standard washer with the O ring, technically, they don't infringe, so we did not sue on that. We sued only on 1, which they clearly infringe. That is the only difference, I believe, except they use the words "circular cross section" rather than the word "doughnut", which is rather broad.

The Court: Are you willing to admit as far as the Dowty Patent is concerned, that that is a one-piece unit and that the rubber ring is cemented or annealed or vulcanized to the metal ring?

Mr. Fulwider: The Dowty Patent? [1033]

The Court: Yes.

Mr. Fulwider: I believe that is correct, your Honor. That rubber ring is fastened, I forget just how, to the metal ring.

The Court: But it is one-piece, it is a one-piece ring.

Mr. Fulwider: Yes, that is right.

Mr. Lee: Your Honor, it is not in our opinion prior art in this case. [1034]

The Court: I don't know whether it is or not. That is something that I would like to have explained to me, whether it is prior art or not.

Mr. Fulwider: Our position is, first, it isn't prior art and, secondly, if it is prior art, it isn't material, that is to say, it does not anticipate the patent in suit.

The Court: Are you insisting Mr. Miller call an expert of his own, or don't you care?

Mr. Fulwider: No, your Honor. As I mentioned to him at lunch, I am aware of the same cases he mentioned. There aren't many. We certainly would not urge that as a ground that the court should ignore the art. We are perfectly willing to let the court handle it any way it wishes. [1035]

* * * * *

The Court: All right. It may be received in evidence.

Mr. Miller: Thank you, Mr. Fulwider.

The Clerk: AF, AF-1 and AF-2.

(The exhibits referred to were received in evidence and marked Defendants' Exhibits AF, AF-1 and AF-2.) [1037]

[See Exhibit AF at page 789.]

* * * * *

PAUL F. SMITH

recalled as a witness by and on behalf of the plaintiffs in rebuttal, having been previously duly sworn, was examined and testified further as follows:

* * * * *

Direct Examination

Q. (By Mr. Fulwider): Calling your attention, Mr. Smith, to Exhibit 111, which is titled Employee's Work Record for Joseph Francis Nenzell, and to the two small withholding slips attached to it, one dated January 2, 1952, and one dated September 17, 1951, first, are you familiar with those documents? A. Yes.

Q. Can you tell me whether or not this is Mr. Nenzell's [1038] signature on the two withholding slips? A. Yes, I recognize that.

Q. Referring to the first page, does that tell when Mr. Nenzell first became employed by the Wolfe Company?

A. It shows that he was employed by them the 9th month, 15th day, 1951, or previously. I don't believe these records were kept individually before that time. I believe he was working here before that time for several months.

Q. At least this Exhibit 111 indicates he was employed with the Wolfe Company on September 15, 1951, and that on September 17, 1951, he made out and delivered to the Wolfe Company a government withholding slip, is that correct?

A. Yes.

Mr. Fulwider: I offer these in evidence, your Honor.

(Testimony of Paul F. Smith.)

The Court: They may be received in evidence.

The Clerk: Exhibit 111.

(The exhibit referred to was received in evidence and marked as Plaintiffs' Exhibit No. 111.)

[See Book of Exhibits.]

Q. (By Mr. Fulwider): Calling your attention, Mr. Smith, to Exhibit 112, which is titled A Lease Between the Dayton Co. Realty Company and Franklin C. Wolfe Company, dated 29th day of September 1951, can you tell me what property that covers? Are you familiar with that document, first?

A. Yes. [1039]

Q. Is that the lease between the Wolfe Company and the lessor named therein on the Eastham plant that the Wolfe Company formerly occupied?

A. Yes. This covers the plant on Eastham Avenue in Culver City, California.

Q. Having the date of that lease in mind, will you tell the court when you moved into the plant on Eastham Avenue or Boulevard?

A. As I recall it, immediately after October 1, and during October we moved completely into the new premises.

Q. That is the year 1951? A. 1951, yes.

Q. Did you start paying rent on October 1, as the lease says? A. I think we did.

Mr. Fulwider: I offer that in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: Exhibit 112.

(Testimony of Paul F. Smith.)

(The exhibit referred to was received in evidence and marked as Defendants' Exhibit 112.)

[See page 783.]

Q. (By Mr. Fulwider): Mr. Smith, did you ever have a conversation with Mr. Kerley in which he showed to you a one-piece seal made substantially as the Duo-Seal is made today?

A. No. [1040]

Mr. Fulwider: That's all, your Honor.

The Court: Any questions?

Mr. Miller: A few.

Cross Examination

Q. (By Mr. Miller): Did Mr. Kerley ever show you any kind of a seal other than the Lock-O-Seal?

A. Yes, all kinds of seals.

Q. Did he show you a seal in the early part of 1952?

A. A seal? That is extremely broad. We sold lots of devices for them that were seals.

Q. Did he show you a one-piece seal in the early part of 1952?

A. Not a one-piece fastener seal, no, sir.

Q. Not one?

A. A one-piece fastener seal, such as the Duo-Seal, Lock-O-Seal, Stat-O-Seal.

Q. He did not show you one in the early part of 1952? A. No, sir.

Q. With reference to the Eastham Street building and the Mississippi Street building, how long did it take you to move from the Mississippi Street building to the Eastham Street building?

(Testimony of Paul F. Smith.)

A. Six or eight hours. [1041]

Q. Do you recall when that was done?

A. Not to the exact day, no, sir.

Q. Did you vacate the Mississippi Street building during the month of October 1951?

A. Yes.

Q. All of your equipment was taken out of the Mississippi Street building and moved to the Eastham Street building during October, and you never went back to the Mississippi Street building?

Mr. Fulwider: Now, he did not testify he never went back to it.

The Court: You mean never reoccupied it as a shop or as a location?

Mr. Miller: Well, maybe my question is too compound.

Q. Do I understand that all of the equipment that you had in the Mississippi Street building was moved from the Mississippi Street building to the Eastham Street building some time during October?

A. I believe it is October.

Q. It would at least all be gone by November?

A. I can't be positive that we moved on the first day of October and occupied the new premises on the first day of October. It may have been on the first day of November. That I cannot be positive. I know we were in the building and celebrated [1042] Christmas there, unwrapped some nice bicycles and things. That is very clear. The actual day we moved is only refreshed by the lease.

Q. You celebrated Christmas at which building?

(Testimony of Paul F. Smith.)

A. Eastham Avenue in Culver City.

Q. You did not celebrate Christmas at the Mississippi Street building?

A. Not at the end of 1951. We did in 1950.

Q. I am not talking about that.

A. That is very clear in my mind.

Q. Did Mr. Karres attend your Christmas party there in 1951?

A. I don't remember that there was a Christmas party. I don't remember that he was there.

Q. What did you mean, you celebrated Christmas in the Eastham Street building?

A. The thing that is very distinct to me is helping unwrap a couple of bicycles Mr. Hagmann bought for his children and had delivered there to keep them secret, and several of us were having fun riding them up and down the aisles on a Saturday afternoon. That is why it is fresh in my mind that we celebrated Christmas in that building.

Q. Did you also have a Christmas party at the Mississippi Street building?

A. It hasn't been our policy to have Christmas parties. [1043] It has been against company policy since I have been there.

The Court: Answer the question. Did you or didn't you?

The Witness: No, sir.

Q. (By Mr. Miller): Now, when you employed Mr. Nenzell, was he constantly at your place of business or was he doing work on the outside and coming in and submitting these drawings?

(Testimony of Paul F. Smith.)

A. He came over as a full-time employee when he first came to work there.

Q. At the Mississippi Street address?

A. Yes, sir.

Q. What part of the building did you assign to him?

A. He worked out in the laboratory with a drawing board.

Q. Did you have a laboratory in the Mississippi Street building? A. Yes, sir.

Q. How large a laboratory was that?

A. Pretty small.

Q. Where was it located from the entrance to the building?

A. The rear right-hand corner of the building in a separate enclosure, eight feet high.

Q. Then you couldn't see whether Mr. Nenzell was there [1044] or not if you were just going in and out of the entrance as a salesman?

A. Not if he was——

Mr. Fulwider: I object to that as a conclusion, your Honor.

The Court: Sustained. It is purely asking for a conclusion as to whether he had seen him or not.

Q. (By Mr. Miller): Is Mr. Nenzell now in your employ? A. No, sir.

Q. Do you know who he is employed by?

A. The Mathewson Corporation.

Q. Is there a relationship between the Mathewson Corporation and Franklin C. Wolfe Company?

A. They are a subcontractor.

Q. Is the Mathewson a subsidiary of the Frank-

(Testimony of Paul F. Smith.)

lin C. Wolfe Company? A. No, sir.

Q. Does Franklin C. Wolfe Company own any substantial portion of the stock in that company?

A. Franklin C. Wolfe Company owns none of the stock in that company.

Q. Mr. Nenzell is available here in this part of the country? A. Yes, I believe so.

The Court: Now, what are you going into that for, [1045] because you are going to clean up this case this afternoon?

Mr. Miller: I am trying to.

The Court: Of course, if you are going to bring him back, you can come back here next Wednesday.

Mr. Miller: That's all.

* * * * *

PAUL A. KARRES

called as a witness by the defendants in surrebuttal, having been previously duly sworn, was examined and testified further as follows:

* * * * *

Direct Examination

Q. (By Mr. Miller): Mr. Karres, did you attend a Christmas party at Christmas of 1951?

A. Yes, I did.

Q. And what Christmas party did you attend?

A. Franklin C. Wolfe Company on Mississippi Avenue. Mr. Elem came and got me at the factory.

Q. Was the building empty of equipment at the time you went over there to the Christmas party?

A. No, sir. [1047]

* * * * *

[Endorsed]: Filed December 3, 1957.

PLAINTIFFS' EXHIBIT No. 2

(Copy)

June 1, 1949

Rubber Teck, Inc.
19115 So. Hamilton Ave.
Gardena, Calif.
Attention: Joe Kerley

Dear Joe:

I am enclosing a copy of Rohr Report No. 347-D, the latest 200 Series Lock-O-Seal specifications.

You will notice that certain dimensions have been changed on the O-rings and retainers for Lock-O-Seals No. 4 through No. 10.

This is as a result of the further experimental work that Bert Gross has been doing in connection with facilitating the production of retainers, etc.

Please look this over casually and let us know what will be involved in the way of new tooling and molds to change over to these new dimensions.

Since we have quite a quantity of engineering bulletins on hand for the Series 200 AC and 200 I Lock-O-Seals we, of course, would like to delay introducing new sizes until we both are in a better position to change over.

Yours very truly,

THE FRANKLIN C. WOLFE
COMPANY,

F. C. Wolfe.

FCW:mlsEncl: 1

PLAINTIFFS' EXHIBIT No. 6

Rohr Aircraft Corporation

(Copy)

April 24, 1950

Mr. Joe Kerley
Rubber-Tech, Inc.
19115 So. Hamilton St.
Gardena, Calif.

Dear Joe:

It appears that Wright Field has experienced some trouble with type #1 fuel with RT-1007 after aging. You will note in enclosed report E-88-1 that RT-1007 had a volume change of +2.26. The old requirement of 6% plus or minus 2% indicates the need for a tight fit which apparently depended on swelling of the material. Giving the material .003 more initially should do a lot to pass this test at Wright Field.

Yours very truly,

ROHR AIRCRAFT CORP.,

Bernard Gross,

Director of Laboratories.

Note: We found Parker had a 4.69 volume change.

PLAINTIFFS' EXHIBIT No. 11

(Copy)

November 20, 1953

Fletcher Aviation Corporation

190 Colorado Blvd.

Pasadena 1, California

Attention: Mr. Paul Reischauer, Engineering
Dept.

Subject: Rubber Teck Duo-Seals

Gentlemen:

As you know from your conversations with Mr. Kerley, we are now in the position to offer Duo-Seals in the very near future. Duo-Seals are a combination of a rubber "O" ring bonded to a steel washer, and are offered in two different rubber compounds. Our part number 2230 with dash numbers in increments of 1/16 of an inch, from —3 to —6 (3/16" to 3/8" I.D.) are formed of rubber conforming to specification MIL-P-5315. Our drawing 2231 with the same dash number designations contains rubber to the specification MIL-R-6855, Class I, Grade 60.

Prices for these parts are as follows:

2230—3	(3/16" I.D.)	\$6.50 per 100
2230—4	(1/4" I.D.)	6.50 per 100
2230—5	(5/16" I.D.)	7.00 per 100
2230—6	(3/8" I.D.)	7.50 per 100
2231—3	(3/16" I.D.)	6.00 per 100
2231—4	(1/4" I.D.)	6.00 per 100
2231—5	(5/16" I.D.)	6.50 per 100
2231—6	(3/8" I.D.)	7.00 per 100

Plaintiffs Exhibit No. 11—(Continued)

These prices are subject to the following discounts:

1 thru	1,000—Net
1,000 thru	5,000—20%
5,000 thru	25,000—30%
25,000 thru	50,000—40%
50,000 thru	100,000—45%
100,000 up	—50%

We are enclosing a few of the 2230-5 Duo-Seals for your inspection. We are also enclosing six copies of a price list of various types of "O" rings which can be supplied by Rubber Teck for your production usage. The sizes as given, are nominal. Actual dimensions are those as shown on AN Standard Sheet AN934.

Very truly yours,

RUBBER TECK, INC.,

Geo. R. Aldrich,
Chief Engineer.

GRA:bl Encls.

PLAINTIFFS' EXHIBIT No. 13

[Headquarters: Wright Air Development Center,
Wright-Patterson Air Force Base, Ohio.]

In reply address both communications and envelope to Commander, Wright Air Development Center, Attention Following Office Symbol: WCLPI-4.

March 11, 1954

Subject: Approval of Duo-Seals

Plaintiffs' Exhibit No. 13—(Continued)

To: Rubber Teck Sales and Service Company
8479 Higuera Street
Culver City, California

1. Reference is made to your letter dated 16 February 1954.

2. Rohr Laboratory Reports 182, 192 and 192-1 enclosed with the above referenced letter have been reviewed and found acceptable; however, testing will be necessary to prove out the Duo-Seal in its intended usage on drop tanks.

3. It is recommended that Rubber Teck perform the following test and forward the results to this Center:

a. Soak Duo-Seals in fuel conforming to Specification MIL-H-3136, Type III, at a temperature of 120 plus or minus 5 degrees Fahrenheit for a period of 300 hours.

b. Remove Duo-Seals from fuel soak and place in an oven at 158 plus or minus 5 degrees Fahrenheit for a period of 150 hours.

c. (1) Remove Duo-Seals and place on standard AN bolts. These bolts will be placed through bolt holes on a pressure test fixture and attached by means of AN nuts on the inside of the fixture.

(2) The bolts will be located so that the AN nuts will be completely covered by the test fuel.

(3) The test fixture shall be filled with fuel conforming to Specification MIL-H-3136, Type I.

(4) The test fixture shall then be pressurized to 20 psig and held at that pressure for 2 minutes.

Plaintiffs' Exhibit No. 13—(Continued)

(5) There shall be no evidence of leakage past the bolt head. This leakage test will be conducted at minus 65 degrees Fahrenheit.

4. The above test should be conducted with various sizes of Duo-Seals. Upon satisfactory completion of this test, Installation Approval will be granted for usage of Duo-Seals on external jettisonable fuel tanks.

For the Commander:

/s/ R. H. RETZ,

Ass't Chief, Installation Branch,
Power Plant Laboratory.

(Stamped): Rec'd Mar 15 1954.

PLAINTIFFS' EXHIBIT No. 17

MANUFACTURING LICENSE AGREEMENT

This agreement made at Beverly Hills, California this 29th day of November, 1948 between The Franklin C. Wolfe Company having its place of business at Beverly Hills, California, hereinafter referred to as Licensor, and J. Kerley, having his principal place of business in Gardena, California hereinafter referred to as Licensee.

Witnesseth:

Whereas Licensor is the Franchised manufacturer and distributor of "Sealing Devices" known as Lock O Seal covered by United States Patent Number 2,396,005, and,

Whereas Licensee is desirous of obtaining an

Plaintiffs' Exhibit No. 17—(Continued)
exclusive license to manufacture said Sealing Devices for Licensor,

Now Therefore in consideration of the premises and of the mutual agreements as herein set forth, the parties agree as follows:

1. Subject to the due performance by Licensee of all terms and conditions of this agreement, Licensor by these presents does give and grant to Licensee for a term of five (5) years from date hereof, unless terminated as hereinafter provided, an exclusive and non-assignable license to manufacture said Sealing Devices.

2. In the manufacture of Sealing Devices hereunder, Licensee agrees to conform strictly with the specifications furnished by Licensor and agrees to use only the best materials and manufacturing methods. Licensee agrees not to contract for the manufacture of all or any component parts of said Sealing Devices hereunder without first securing consent of Licensor.

3. Licensee agrees to maintain an approved cost accounting system wherein all cost information pertaining to materials, labor, overhead, engineering, development and other particulars necessary to show the manufacturing costs of said Sealing Devices, will be shown, and shall permit designated representatives of Licensor to have free access to said records at all reasonable times to inspect and make copies of said books of account.

Plaintiffs' Exhibit No. 17—(Continued)

4. The cost of the finished products hereunder to the Licensor shall be determined and approved by mutual agreement between Licensee and Licensor and shall be arrived at by the addition of a reasonable profit to the total manufacturing costs.

5. Licensee further agrees that he will not manufacture Sealing Devices hereunder for any other individual or organization who may be franchised to manufacture and/or sell said product.

6. If Licensee shall become insolvent, or shall make an assignment for the benefit of creditors or proceedings in voluntary bankruptcy shall be instituted in behalf of or against Licensee or a receiver or trustee of Licensee's property shall be appointed, the License hereunder granted shall terminate forthwith.

Licensor may terminate this agreement upon thirty (30) days notice in writing to the Licensee whenever, in the opinion of Licensor, the Licensee shall fail to use due diligence, or expend the best efforts to maintain manufacturing proficiency and lowest manufacturing costs.

8. Further Licensor may terminate this agreement upon thirty (30) days notice in writing in the event the license agreement between Licensor and the owner of subject patent is terminated.

Upon cancellation of agreement between Licensor and Licensee for reason given in paragraph 8 here, all unpaid accounts due Licensee under this license

Plaintiffs' Exhibit No. 17—(Continued)
shall accrue and become immediately due and payable.

9. The Licensee hereby assumes entire responsibility and liability in and for any and all damages or injuries of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the manufacture of Sealing Devices covered by this license or occurring in connection therewith and agrees to indemnify and save harmless Licensor, its agents, servants and employees from and against any and all loss, expenses (including attorneys fees), damages or injuries grown out of or resultant from or occurring in connection with the execution by Licensee of any work performed in connection with the license herein granted, or occurring in connection with or resultant from use by Licensee, its agents or employees, of any material, tools, or other property of Licensor whether the same arise under the common law, or so-called workmen's compensation law or otherwise.

Licensee agrees to procure and maintain a policy of liability insurance in limits adequate to effectuate the agreements herein.

10. Any notice required by the terms of this agreement to be given by Licensee to Licensor shall be given by United States mail, addressed to the Licensor at Beverly Hills, California. Any notice required for the termination of this agreement to be given by United States mail, addressed to the

Plaintiffs' Exhibit No. 17—(Continued)

Licensee at 19115 South Hamilton Street, Gardena, California.

In Witness Whereof the parties hereto have set their hands as of the date first above written.

THE FRANKLIN C. WOLFE
COMPANY,

Licensors,

By

President-Owner

(Title)

.....

Joe P. Kerley,

Licensee.

Witness:

.....

Witness:

.....

PLAINTIFFS' EXHIBIT No. 21

[The Franklin C. Wolfe Company Inc., Beverly Hills, California, Bradshaw 2-3331, 407 Commercial Street.]

AGREEMENT

The Franklin C. Wolfe Company, Inc.
and Rubber Teck, Inc.

An exclusive sales representation shall be given The Franklin C. Wolfe Company, Inc. by Rubber Teck, Inc. for a period of 7 years from date of signing of this agreement.

Plaintiffs' Exhibit No. 21—(Continued)

In consideration of the premises and of the mutual agreements as herein set forth, the parties agree as follows:

1. The Franklin C. Wolfe Company, Inc. shall expend the maximum effort in the promotion and sales of products developed and manufactured by Rubber Teck, Inc.; such efforts shall include the necessary personal contacts, circularization of printed matter and use of advertising media.

2. The Franklin C. Wolfe Company, Inc. shall accomplish all invoicing and billing of all accounts except when by mutual agreement, certain accounts shall be handled by Rubber Teck, Inc.

3. The Franklin C. Wolfe Company, Inc. agrees that during the period of this agreement, no competitive line of product shall be handled by that organization except by written authority of Rubber Teck, Inc.

Rubber Teck, Inc. agrees to:

1. Use only the best materials and manufacturing methods in the manufacture of all products, and shall make every effort to maintain minimum costs and overhead, and:

(a) Shall assume responsibility for the replacement of/or refund on products that are rejected by the customer for valid reasons.

2. Maintain complete records of all sales made either direct or through The Franklin C. Wolfe Company, Inc. Such records of sales shall form the basis for remuneration to The Franklin C. Wolfe Company, Inc.

Plaintiffs' Exhibit No. 21—(Continued)

In the event quotations or sales are made direct to customers by Rubber Teck, Inc., information of such transactions shall be immediately brought to the attention of The Franklin C. Wolfe Company, Inc.

Since this agreement pertains only to the sale of Rubber Teck, Inc. products by The Franklin C. Wolfe Company, Inc., the latter shall assume no liabilities or responsibilities pertaining to the operation of Rubber Teck, Inc. as a corporation except as covered herein.

In consideration of the foregoing, The Franklin C. Wolfe Company, Inc. shall receive from Rubber Teck, Inc. the following remuneration for services rendered: 1. A minimum of 10% of gross dollar volume of sales of Rubber Teck, Inc. products plus an additional 2% for advertising media, literature, invoicing, accounting, etc., which additional percentage may be reduced or increased by mutual agreement, depending upon the volume of sales and continuing necessity for such media.

Further, Rubber Teck, Inc. agrees that all quotations to customers, either direct or through The Franklin C. Wolfe Company, Inc. shall include a 2% mark up, which percentage shall be passed on to the customer in the form of an allowable discount of that amount for all invoices paid within 10 days of invoicing. Terms of payment in all cases shall be on a 2% 10 Days, Net 30 Days basis.

It is further agreed that, upon the signing of this agreement, commissions on all sales by Rubber

Plaintiffs' Exhibit No. 21—(Continued)

Teck, Inc. from the date shown herein below shall be paid to The Franklin C. Wolfe Company, Inc. at the rate shown hereon with the exception of sales of products to Douglas Aircraft Company, Inc. upon which prices have been established prior to the signing of this agreement. Commission on such sales shall be paid at the rate of 5%; commissions on any new business obtained from Douglas Aircraft Company, Inc. shall be paid for at the same rate as other sales.

In the event of non-collectible or bad accounts, it is agreed that the actual cost of manufacturing of the products supplied the customer shall be borne one third by The Franklin C. Wolfe Company, Inc. and two thirds by Rubber Teck, Inc. Neither sales commission nor manufacturing profit shall be included in such costs.

In the event of cancellations on unshipped orders, sales commission shall be paid on only that part of the order that has been invoiced and paid. No commission will be paid on cancellation charges submitted by Rubber Teck, Inc.

If either party shall become insolvent, or shall make an assignment for the benefit of creditors, or proceedings in voluntary bankruptcy shall be instituted in behalf of or against either party or a receiver or trustee of either party's property shall be appointed, the agreement hereunder shall be terminated forthwith and neither party shall be held liable for debts, etc. of the other.

This agreement shall be terminated only by mutual agreement or by due process of law. Any un-

Plaintiffs' Exhibit No. 21—(Continued)

paid accounts to either party from the other shall accrue and become immediately due and payable.

It is mutually understood and agreed that this agreement in no way encompasses the sale or manufacture of the product Lock O Seal which subject is covered by a separate agreement dated 29 November, 1948.

Any notice required by the terms of this agreement to be given by Rubber Teck, Inc. to The Franklin C. Wolfe Company, Inc. shall be given by U. S. Mail, addressed to The Franklin C. Wolfe Company, Inc., 208 Commerce Building, 407 Commercial Center Street, Beverly Hills, California.

Any notice required by the terms of this agreement to be given by The Franklin C. Wolfe Company, Inc. to Rubber Teck, Inc. shall be given by U. S. Mail, addressed to Rubber Teck, Inc., 19115 South Hamilton Ave., Gardena, California.

Accepted for

THE FRANKLIN C. WOLFE
COMPANY, INC.,

/s/ By FOSTER M. HAGMANN,
Secretary,

/s/ FRANKLIN C. WOLFE,
President.

Accepted for

RUBBER TECK, INC.,

/s/ JOE KERLEY,
Secretary,

/s/ PAUL A. KARRES,
President.

Date: August 15, 1949.

PLAINTIFFS' EXHIBIT No. 90

License Agreement

This Agreement made at Chula Vista, California this 15th day of July, 1946 between Rohr Aircraft Corporation, a California Corporation, having its principal place of business in Chula Vista, California, hereinafter referred to as Licensor, and Howard D. Green and Henry S. Kyle, doing business as Green and Kyle, both residing in the city of Compton, California, hereinafter referred to as Licensee,

Witnesseth:

Whereas Licensor is the owner of Patent Number 2,396,005 covering Sealing Devices, and

Whereas Licensee is desirous of obtaining a non-exclusive and non-assignable license to manufacture and sell Sealing Devices coming within the scope of the claims of said patent, hereinafter referred to as Sealing Devices,

Now Therefore In Consideration of premises and of the mutual agreements hereinafter set forth, the parties agree as follows:

1. Subject to the due performance by Licensee of all the terms and conditions of this agreement, Licensor by these presents does give and grant to Licensee for the life of said Patent Number 2,396,005, unless terminated as hereinafter provided, a non-exclusive and non-assignable license to manufacture and sell Sealing Devices throughout the United States of America and its territorial possessions.

Plaintiffs' Exhibit No. 90—(Continued)

2. Licensee agrees to pay to Licensor its successors and assigns, a royalty of five per cent of the net amount when and as received for all Sealing Devices manufactured and sold by Licensee.

3. Licensee at his place of business shall keep full and accurate books of account containing all particulars necessary to show the amount payable to Licensor by way of royalty as aforesaid, and all such other matters pertinent to Licensee's operation under this Agreement and shall permit designated representatives of Licensor to have free access to said records at all reasonable times to inspect and make copies of said books of accounts.

4. Licensee within twenty days after the end of August, 1946 and each month thereafter shall furnish to Licensor a true and accurate report in writing, giving such particulars of the business conducted by Licensee during the preceding month as are pertinent to accounting under this license and simultaneously with the making of each report shall pay to Licensor the royalties shown to be due for the period covered by such report.

The rendering of any report and/or the payment of royalty known to be due shall not in any event bar or in any way operate as an estoppel to Licensor's rights to examination, inspection and audit as hereinbefore provided, or any rights or remedies of Licensor to any additional royalties that may be found to be due, all of which rights and remedies it is mutually understood and agreed shall survive

Plaintiff's Exhibit 90—(Continued)

and shall not be deemed to have been waived by any act or omission on the part of the Licensor.

5. Licensee acknowledges the validity of U. S. Patent Number 2,396,005 and agrees not to contest the same or be a party directly or indirectly in disputing the validity of said patent.

6. If Licensee shall at any time default in the payment of any royalty or in the making of any report hereunder or shall breach any of the terms or conditions herein contained and shall fail to remedy any such default or breach within fifteen days after written notice thereof from Licensor, the Licensor may, at its option, cancel this Agreement and revoke the license herein granted by notice in writing to such effect, but such act shall not prejudice any cause of action or claim of Licensor accrued or to accrue, on account of any breach or default made by Licensee.

7. If Licensee shall become insolvent, or shall make an assignment for the benefit of creditors, or proceedings in voluntary or involuntary bankruptcy shall be instituted in behalf of or against Licensee, or a receiver or trustee of Licensee's property shall be appointed, the license herein granted shall terminate forthwith, but the Licensor shall recover royalties due up to the time of such cancellation and in case of any such termination all right, title and interest in and to the license covered by this Agreement shall thereupon revert to and become vested in Licensor.

Plaintiffs' Exhibit No. 90—(Continued)

8. Failure to exercise any right or to terminate this Agreement in accordance with its terms shall not be deemed a waiver of the right to do so for persistence by the Licensee in a breach of continuing nature or for any subsequent breach.

9. Licensee or Licensor may surrender or terminate this license at any time upon thirty days notice in writing to the other party.

Upon any surrender, cancellation or termination of this license, all unpaid royalties under this license shall accrue and become immediately due and payable.

10. The Licensee hereby assumes entire responsibility and liability in and for any and all damages or injuries of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the use of Sealing Devices covered by this license or incurring in connection therewith and agrees to indemnify and save harmless Licensor its agents, servants and employees from and against any and all loss, expenses (including attorney's fees), damages or injuries, growing out of or resulting from or occurring in connection with execution by Licensee of any work performed in connection with the license herein granted, or occurring in connection with or resulting from the use by Licensee, its agents or employees, of any materials, tools, or other property of Licensor whether the same arise under the common law or any so called workmen's

Plaintiffs' Exhibit No. 90—(Continued)

compensation law or otherwise. Nothing herein contained is intended to obligate Licensee to save Licensor harmless as to claims of infringement of adversely held patents and/or all other acts or omissions by Licensor beyond the control of Licensee.

11. The term Licensee as used in this agreement shall mean either Howard D. Green or Henry S. Kyle, or both of them and a breach of any of the terms and conditions in this Agreement by either of them shall constitute a breach of this Agreement by Licensee.

12. Licensee specifically grants to Licensor the option and privilege to purchase any quantity of Sealing Devices at any time from Licensee at Licensee's normal manufacturing selling price. In such event the net amount received by Licensee from the sale of Sealing Devices to Licensor shall be subject to royalty payments under this Agreement.

13. This Agreement shall be binding upon and inure to the benefit of the successor or assigns of Licensor.

14. Any notice required by the terms of this Agreement to be given by Licensee to Licensor shall be given by United States mail, addressed to the Licensor at Chula Vista, California. Any notice required for the termination of this Agreement to be given by United States mail, addressed to the Licensee at 1121 East Rosecrans Street, Compton, California.

Plaintiffs' Exhibit No. 90—(Continued)

In Witness Whereof the parties hereto have set their hand as of the date first above written.

ROHR AIRCRAFT
CORPORATION.

/s/ By J. E. RHEIM,
Executive Vice President.

GREEN AND KYLE,
/s/ HOWARD D. GREEN,
/s/ HENRY S. KYLE.

State of California,
County of San Diego—ss.

On this 16th day of July, 1946, before me, S. W. Shepard, a Notary Public in and for said County and State, personally appeared J. E. Rheim, known to me to be the Executive Vice President of Rohr Aircraft Corporation, and who acknowledged to me that he executed the foregoing instrument within the scope of his authority and on behalf of the Rohr Aircraft Corporation.

Witness my hand and official seal the day and the year in this certificate first above written.

/s/ S. W. SHEPARD,
Notary Public in and for said County and State.
My Commission expires August 12, 1947.

State of California,
County of Los Angeles—ss.

On this 19th day of July, 1946, before me the undersigned in and for said County and State,

Plaintiffs' Exhibit No. 90—(Continued)
personally appeared Howard D. Green and Henry S. Kyle, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal the day and the year in this certificate first above written.

/s/ (Illegible),

Notary Public in and for said County and State.

My Commission Expires Jan. 23, 1950.

PLAINTIFFS' EXHIBIT No. 91

License Agreement

This Agreement made at Chula Vista, California this 12th day of November, 1948, between Rohr Aircraft Corporation, a California Corporation, having its principal place of business at Chula Vista, California, hereinafter referred to as Licensor, and Franklin C. Wolfe, doing business as the Franklin C. Wolfe Company, having his principal place of business in Beverly Hills, California, hereinafter referred to as Licensee,

Witnesseth:

Whereas Licensor is the owner of United States Patent Number 2,396,005, covering certain devices known as and hereinafter referred to as "Sealing Devices", and,

Whereas Licensee is desirous of obtaining a non-exclusive and non-assignable license to make and

Plaintiffs' Exhibit No. 91—(Continued)

sell Sealing Devices coming within the scope of the claims of said patent,

Now Therefore in consideration of the premises and of the mutual agreements as hereinafter set forth, the parties agree as follows:

1. Subject to the due performance by Licensee of all terms and conditions of this Agreement, Licensor by these presents does give and grant to Licensee for a term of five (5) years from date hereof unless terminated as hereinafter provided, a non-exclusive and non-assignable license to manufacture and sell Sealing Devices.

2. In the manufacture of Sealing Devices hereunder, Licensee agrees to conform strictly with the specifications furnished by Licensor and agrees to use only the best of materials and manufacturing methods. In the sale of Sealing Devices hereunder, Licensee agrees to use only legitimate and generally accepted sales techniques. Licensee agrees not to contract for or sublicense the manufacture of Sealing Devices hereunder without first securing consent of Licensor.

3. Licensee agrees to pay to Licensor, its successors and assigns, a royalty of five (5) per cent of the net amount of the normal manufacturing selling price when and as received from the sale of all Sealing Devices manufactured by Licensee.

4. Licensee at his place of business shall keep full and accurate books of account containing all

Plaintiffs' Exhibit No. 91—(Continued)

particulars necessary to show the amount payable to Licensor by way of royalty as aforesaid, and all such other matters pertinent to Licensee's operation under this agreement and shall permit designated representatives of Licensor to have free access to said records at all reasonable times to inspect and make copies of said books of account.

5. Licensee within twenty days after the first of the month following the execution of this agreement and not later than the twentieth day of each month thereafter shall furnish to Licensor a true and accurate report in writing, giving such particulars of the business conducted by Licensee during the preceding month as are pertinent to accounting under this license and simultaneously with the making of each report shall pay to Licensor the royalties shown to be due for the period covered by such report.

The rendering of any report and/or the payment of royalty known to be due shall not in any event bar or in any way operate as an estoppel to Licensor's right to examination, inspection and audit as hereinbefore provided, or any rights or remedies of Licensor to any additional royalties that may be found to be due, all of which rights and remedies it is mutually understood and agreed shall survive and shall not be deemed to have been waived by any act or omission on the part of the Licensor.

6. Licensee acknowledges the validity of United

Plaintiffs' Exhibit No. 91—(Continued)

States Patent Number 2,396,005 and agrees not to contest the same or be a party directly or indirectly in disputing the validity of said patent.

7. If Licensee shall at any time default in the payment of any royalty or in the making of any report hereunder or shall breach any of the terms or conditions herein contained, and shall fail to remedy any such default or breach within fifteen days after written notice thereof from Licensor, the Licensor may, at its option, cancel this Agreement and revoke the License herein granted by notice in writing to such effect, but such act shall not prejudice any cause of action or claim of Licensor accrued or to accrue, on account of any breach or default made by Licensee.

8. If Licensee shall become insolvent, or shall make an assignment for the benefit of creditors, or proceedings in voluntary or involuntary bankruptcy shall be instituted in behalf of or against Licensee, or a receiver or trustee of Licensee's property shall be appointed, the license herein granted shall terminate forthwith, but the Licensor shall recover royalties due up to the time of such cancellation and in case of any such termination, all right, title and interest in and to the license covered by this Agreement shall thereupon revert to and become vested in Licensor.

9. Failure to exercise any right or to terminate this Agreement in accordance with its terms shall not be deemed a waiver of the right to do so for

Plaintiffs' Exhibit No. 91—(Continued)

persistence by the Licensee in a breach of continuing nature or for any subsequent breach.

10. Licensor may terminate this license upon thirty (30) days' notice in writing to the Licensee whenever, in the opinion of Licensor, the Licensee or its representatives shall fail either to use due diligence or expend a reasonable effort in the exploitation, manufacture or sale of the Sealing Devices licensed herein.

11. Upon cancellation or termination of this license, all unpaid royalties under this license shall accrue and become immediately due and payable.

12. The Licensee hereby assumes entire responsibility and liability in and for any and all damages or injuries of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the use of Sealing Devices covered by this license or occurring in connection therewith and agrees to indemnify and save harmless Licensor, its agents, servants and employees from and against any and all loss, expenses (including attorney's fees), damages or injuries, growing out of or resulting from or occurring in connection with the execution by Licensee of any work performed in connection with the license herein granted, or occurring in connection with or resulting from the use by Licensee, its agents or employees, of any materials, tools, or other property of Licensor whether the same arise under the common law or any so-called workmen's

Plaintiffs' Exhibit No. 91—(Continued)

compensation law or otherwise. Licensee agrees to procure and maintain a policy of liability insurance in limits adequate to effectuate the agreements herein. Nothing herein contained is intended to obligate Licensee to save Licensor harmless as to claims of infringement of adversely held patents and/or all other acts or omissions by Licensor beyond the control of Licensee.

13. Licensee specifically grants to Licensor the option and privilege to purchase any quantity of Sealing Devices at any time from Licensee at Licensee's normal manufacturing selling prices. In such event the net amount received by Licensee from the sale of Sealing Devices to Licensor shall be subject to royalty payments under this Agreement.

14. Any notice required by the terms of this Agreement to be given by Licensee to Licensor shall be given by United States mail, addressed to the Licensor at Chula Vista, California. Any notice required for the termination of this Agreement to be given by United States mail, addressed to the Licensee at 407 Commercial Center Street, Beverly Hills, California.

It Witness Whereof the parties hereto have set their hands as of the date first above written.

ROHR AIRCRAFT
CORPORATION,

Licensor,

/s/ By FRED H. ROHR,
President.

Plaintiffs' Exhibit No. 91—(Continued)

/s/ FRANKLIN C. WOLFE,

Franklin C. Wolfe, doing business as Franklin C.
Wolfe Company, Licensee.

Witness:

/s/ S. W. SHEPARD.

Witness:

/s/ MARIAN L. SPARLING.

PLAINTIFFS' EXHIBIT No. 92

License Agreement

This Agreement made at Chula Vista, California this 25th day of July, 1950, between Rohr Aircraft Corporation, a California Corporation, having its principal place of business at Chula Vista, California, hereinafter referred to as Licensor, and The Franklin C. Wolfe Company, Inc., a California Corporation, having its principal place of business in Beverly Hills, California, hereinafter referred to as Licensee.

Witnesseth:

Whereas Licensor is the owner of United States Patent Number 2,396,005 covering certain devices known as "Sealing Devices", and

Whereas Licensee is desirous of obtaining an exclusive license to make and sell said Invention,

Now, Therefore in Consideration of the premises and of the mutual agreements as hereinafter set forth, the parties agree as follows:

1. The term "Invention" as used herein shall

Plaintiffs' Exhibit No. 92—(Continued)

mean Sealing Devices coming within the scope of the claims of the above patent.

2. Subject to the due performance by Licensee of all terms and conditions of this Agreement, Licensor by these presents does give and grant to Licensee for a term of ten (10) years from date hereof, unless terminated as hereinafter provided, an exclusive license to manufacture and sell the Invention. This license may not be assigned by Licensee except with the express written approval of Licensor.

3. In the manufacture of the Invention, Licensee agrees to conform strictly with the specifications furnished by Licensor and agrees to use only the best of materials and manufacturing methods. In the sale of the Invention, Licensee agrees to use only legitimate and generally accepted sales techniques. Licensee agrees not to contract for or sublicense the manufacture or sale of the Invention without first securing consent of Licensor.

4. Licensee agrees to pay to Licensor, its successors and assigns, a royalty of three per cent (3%) on all sales of the Invention. In no event shall annual royalties to be paid hereunder be less than the sum of \$1,500.00.

5. Licensee at his place of business shall keep full and accurate books of account containing all particulars necessary to show the amount payable to Licensor by way of royalty as aforesaid, and all such other matters pertinent to Licensee's opera-

Plaintiffs' Exhibit No. 92---(Continued)

tion under this Agreement and shall permit designated representatives of Licensor to have free access to said records at all reasonable times to inspect and make copies thereof.

On January 15, 1951 and annually thereafter, Licensee shall submit a report to Licensor showing the cost of Licensee of producing and selling products hereunder and the profit resulting therefrom for the previous calendar year. In preparing this report, Licensee shall exclude costs which are not recognized as an allowable cost of doing business on Government contracts as set forth and described in the "Contract Cost Principles of Armed Services Procurement Regulations". Immediately thereafter, Licensor and Licensee will negotiate promptly and in good faith to consider revising the rate of royalty to be paid Licensor hereunder to maintain a fair and reasonable rate of royalty under the circumstances applicable to the subject matter hereunder and business practice for the general type of product.

6. Licensee within twenty days after the first of the month following the execution of this Agreement and not later than the twentieth day of each month thereafter shall furnish to Licensor a true and accurate report in writing, giving such particulars of the business conducted by Licensee during the preceding month as are pertinent to accounting under this License and simultaneously with the making of each report shall pay to Licen-

Plaintiffs' Exhibit No. 92—(Continued)

sor the royalties shown to be due for the period covered by such report.

In the report to be filed by Licensee for the period ending July 31, 1951, Licensee shall pay the difference, if any, between the sum of royalties reported for the previous eleven months and the minimum annual royalty required by Paragraph 4 above.

The rendering of any report and/or the payment of royalty known to be due shall not in any event bar or in any way operate as an estoppel to Licensor's right to examination, inspection and audit as hereinbefore provided, or any rights or remedies of Licensor to any additional royalties that may be found to be due, all of which rights and remedies it is mutually understood and agreed shall survive and shall not be deemed to have been waived by any act or omission on the part of the Licensor.

7. In further consideration of the awarding of an exclusive License Agreement, Licensee agrees to institute an advertising program and to expend a reasonable sum thereon in the exploitation of the Invention.

8. Licensee acknowledges the validity of United States Patent Number 2,396,005 and agrees not to contest the same or be a party directly or indirectly in disputing the validity of said patent. Licensor believes said patent to be valid but does not warrant the same and therefore does not hold

Plaintiffs' Exhibit No. 92—(Continued)

Licensee harmless in the event of patent infringement claims.

9. If Licensee shall at any time default in the payment of any royalty or in the making of any report hereunder or shall breach any of the terms or conditions herein contained, and shall fail to remedy any such default or breach within fifteen days after written notice thereof from Licensor, or if the royalty earned, exclusive of annual minimum royalty, shall not equal at least \$2,500.00 in a twenty-four month period, the Licensor may, at its option, cancel this Agreement and revoke the License herein granted by notice in writing to such effect, but such act shall not prejudice any cause of action or claim of Licensor accrued or to accrue, on account of any breach or default made by Licensee.

10. If, during the term of this Agreement, Licensee becomes insolvent, or shall make an assignment for the benefit of creditors, or proceedings in voluntary or involuntary bankruptcy shall be instituted in behalf of or against Licensee, or a receiver or trustee of Licensee's property shall be appointed, the License granted herein shall terminate forthwith, but the Licensor shall recover royalties due up to the time of such cancellation and in case of any such termination, all right, title and interest in and to the License covered by this Agreement shall thereupon revert to and become vested in Licensor.

11. Licensor may terminate this License by

Plaintiffs' Exhibit No. 92—(Continued)

thirty (30) days notice by registered mail whenever the Licensee or its representatives, in the opinion of the Licensor, shall fail either to use due diligence or expend a reasonable effort in the exploitation, manufacture or sale of the Invention. In such event, should Licensee consider such action unjustified, he may within said thirty (30) days following the mailing of such notice, request in writing that the matter be submitted to arbitration. Each party thereupon shall appoint an arbitrator and the two so chosen shall elect a third and thereupon the three shall consider the dispute. Providing Licensee shall have complied with this paragraph by promptly appointing his arbitrator and provided further that the arbitrator so appointed by Licensee shall act with diligence, the termination of this License shall be suspended pending the final decision of the arbitrators. The decision of the arbitrators shall be in writing. In the event two of the arbitrators shall find Licensor's action to be unjustified, then the License shall continue in full force and effect. Nothing herein contained shall prevent or restrict Licensor from again proceeding to terminate this agreement, shall it feel justified in doing so.

12. Failure to exercise any right or to terminate this Agreement in accordance with its terms shall not be deemed a waiver of the right to do so for persistence by the Licensee in a breach of continuing nature or for any subsequent breach.

Plaintiffs' Exhibit No. 92--(Continued)

13. Upon cancellation or termination of this license, all unpaid royalties under this license shall accrue and become immediately due and payable.

14. The Licensee hereby assumes entire responsibility and liability in and for any and all damages or injuries of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the use of the Invention covered by this License or occurring in connection therewith and agrees to indemnify and save harmless Licensor, its agents, servants and employees from and against any and all loss, expenses (including attorneys' fees), damages or injuries, growing out of or resulting from or occurring in connection with the execution by Licensee of any work performed in connection with the License herein granted, or occurring in connection with or resulting from the use by Licensee, its agents or employees, of any material, tools, or other property of Licensor whether the same arise under the common law or any so-called workmen's compensation law, or otherwise. Licensee agrees to procure and maintain a policy of liability insurance in limits adequate to effectuate the agreements herein. Nothing herein contained is intended to obligate Licensee to save Licensor harmless as to claims of infringement of adversely held patents and/or other acts or omissions by Licensor beyond the control of Licensee.

15. Licensee specifically grants to Licensor the

Plaintiffs' Exhibit No. 92—(Continued)

option and privilege to purchase any quantity of the Invention at any time from Licensee at Licensee's normal selling price. In such event the amount received by Licensee from the sale of the Invention to Licensor shall be subject to royalty payments under this agreement.

16. Licensor agrees to make available to Licensee information on any technological improvements falling within the scope of United States Patent Number 2,396,005 and to the extent deemed appropriate by Licensor, to make available to Licensee laboratory services and technical assistance in connection with the testing of and furnishing of reports on the Invention.

17. Any notice required by the terms of this Agreement to be given by Licensee to Licensor shall be given by United States mail, addressed to the Licensor at Chula Vista, California. Any notice under this Agreement to be given by Licensor to Licensee shall be given by United States mail, addressed to Licensee at 407 Commercial Center Street, Beverly Hills, California.

In Witness Whereof the parties hereto have set their hands as of the date first above written.

ROHR AIRCRAFT
CORPORATION,
Licensor,

/s/ By J. E. RHEIM,
Executive Vice President.

Plaintiffs' Exhibit No. 92—(Continued)

Witness:

/s/ S. W. SHEPARD.

THE FRANKLIN C. WOLFE
COMPANY, INC.,
Licensee,

/s/ By FRANKLIN C. WOLFE,
President.

Witness:

/s/ S. W. SHEPARD.

PLAINTIFFS' EXHIBIT No. 95

[Letterhead of The Franklin C. Wolfe Company.]

November 15, 1948

Rohr Aircraft Corporation
Chula Vista, California

Attention: Mr. S. W. Shepard

Dear Mr. Shepard.

Enclosed please find signed copy of the license agreement per United States Patent Number 2,396,005.

In connection with paragraph 2 of page 1 concerning subcontracting for, or sublicensing the manufacture of sealing devices, since Rubber Tech, Incorporated of Gardena, California are presently manufacturing Lock-O-Seals for this company, we would like to continue with this arrangement, under a separate agreement to be entered into with that company subject to your approval. Such approval by your office will be appreciated.

Plaintiffs' Exhibit No. 95—(Continued)

Thank you for your kind consideration in this matter. We look forward to a mutually satisfactory relationship with your company, and assure you of our closest cooperation at all times.

Very truly yours,

/s/ F. C. WOLFE.

FCW:mls

Encl:

PLAINTIFFS' EXHIBIT No. 96

(Copy)

November 17, 1948

Mr. F. C. Wolfe

The Franklin C. Wolfe Company

407 Commercial Center Street

Beverly Hills, California

Dear Mr. Wolfe:

We acknowledge receipt of your letter of November 15, together with one copy of the executed License Agreement.

We would be pleased to review your tentative agreement with Rubber, Tech, for the manufacture of Lock-O-Seals and if satisfactory will approve such agreement as provided in the terms of the license agreement.

Very truly yours,

ROHR AIRCRAFT CORPORATION,

S. W. Shepard,
Secretary.

SWS:dh

PLAINTIFFS' EXHIBIT No. 97

[Letterhead of The Franklin C. Wolfe
Company, Inc.]

August 4, 1950

Rohr Aircraft Corporation
Chula Vista, California
Attention: S. W. Shepard, Secretary

Dear Mr. Shepard:

It will be appreciated if a letter is forwarded to this office cancelling the non-exclusive manufacturing and sales license on Lock O Seal. While the new exclusive agreement covering the same subject naturally supersedes the non-exclusive agreement, such a notification is desired because of the necessary change of status that will be effected in connection with our original agreement with Mr. Joe Kerley of Rubber Teck, Inc. covering a subcontracting manufacturing agreement.

It is further requested that our company be authorized to subcontract to Rubber Teck, Inc. the manufacture of any components of Lock O Seal that may be desired.

Your immediate attention to the above matters will be appreciated.

Yours very truly,

THE FRANKLIN C. WOLFE
COMPANY, INC.,
/s/ F. C. WOLFE, MLS,
F. C. Wolfe.

FCW:mls

PLAINTIFFS' EXHIBIT No. 98

(Copy)

March 17, 1949

Green Rubber and Machine Works

19115 South Hamilton Avenue

Gardena, California

Attention: Mr. Joe Kerley, Secretary-Treasurer

Dear Mr. Kerley:

On July 15, 1946 we arranged through you to license Howard D. Green and Henry S. Kyle to manufacture sealing devices under patent 2,396,005. This license was non-exclusive and non-assignable. As you know, we have also licensed Industrial Specialties, Inc., and The Franklin C. Wolfe Company under similar type licenses.

We are now arranging to issue an exclusive license to The Franklin C. Wolfe Company to manufacture and sell sealing devices under this patent. As a consequence, we wish to revoke the existing licenses outstanding.

We understand from you that Green and Kyle have dissolved their partnership and therefore the partnership as such is not producing Lock-O-Seals under the license agreement. No reports have been filed as required.

The License Agreement provides that it may be canceled in the event of the failure of Licensee to furnish reports as required and further provides that either party may terminate same upon thirty (30) days notice in writing to the other party. It is our desire to terminate this license agreement. We would prefer to cancel the license agreement by

Plaintiffs' Exhibit No. 98—(Continued)
mutual consent rather than file a notice of termination as provided for in the license agreement. We enclose a letter addressed to Green and Kyle which when signed by them will accomplish this, and we will appreciate your securing the signatures of Mr. Green and Mr. Kyle to this letter and return a copy to us at your earliest convenience.

We understand Mr. Wolfe has or will issue a license to your organization as presently constituted to manufacture the sealing devices for The Franklin C. Wolfe Company.

Very truly yours,

ROHR AIRCRAFT CORPORATION,

S. W. Shepard,
Secretary.

SWS:dh

Enclosure

cc: Mr. F. C. Wolfe

PLAINTIFFS' EXHIBIT No. 99

ROHR AIRCRAFT CORPORATION

August 7, 1950

The Franklin C. Wolfe Company
401 Commercial Center Street
Beverly Hills, California
Attention: Mr. Franklin C. Wolfe

Gentlemen:

With the execution of the exclusive license agree-

Plaintiffs' Exhibit No. 99—(Continued)

ment dated July 28, 1950 covering Sealing Devices under U. S. Patent Number 2,396,005, the non-exclusive license agreement dated November 12, 1948 has been superseded. As of July 25, we will look forward to receiving your monthly royalty reports as called for under the exclusive agreement and will expect no further reports under the non-exclusive license agreement.

Paragraph 3 of the exclusive agreement requires our consent to your manufacturing source. We are pleased to advise that we approve Mr. Joe Kerley as a source of supply under this agreement.

We have inserted the date July 31 in the blank appearing on page 3 of the license agreement. Please complete your copy to conform.

Please indicate your consent to the mutual termination of the non-exclusive license agreement as of July 25, 1950 by signing and returning a copy of this letter.

Very truly yours,

ROHR AIRCRAFT CORPO-
RATION,

/s/ S. W. SHEPARD,
S. W. Shepard,
Secretary.

Accepted August 9, 1950.

THE FRANKLIN C. WOLFE
COMPANY,

/s/ By FRANKLIN C. WOLFE.

SWS:dh

PLAINTIFFS' EXHIBIT No. 100

[Rubber Teck, Inc., 19115 South Hamilton Ave.,
Gardena, California.]

February 25th, 1953

The Franklin C. Wolfe Company, Inc.

3644 Eastham Drive

Culver City, California

Gentlemen:

It is hereby mutually understood and agreed that all sales representation agreements between Rubber Teck, Inc. and The Franklin C. Wolfe Company, Inc. and all amendments and modifications thereof, shall terminate as of the close of the business day February 28th, 1953 and that all accrued liability or obligations of one party to the other under any of such agreements which remain unperformed as of the termination date, shall be discharged not later than March 15th, 1953.

Very truly yours,

RUBBER TECK, INC.,

/s/ By PAUL A. KARRES,

President.

THE FRANKLIN C. WOLFE
COMPANY, INC.,

/s/ By FRANKLIN C. WOLFE.

PLAINTIFFS' EXHIBIT No. 112

(Stamped): Received April 19, 1956, Franklin
C. Wolfe Co., Inc.

April 16, 1956

The Franklin C. Wolfe Company, Inc.,
3644 Eastham Drive,
Culver City, California

Attention: Mr. Paul F. Smith

Re: Premises 3644 Eastham Drive, Culver City,
Calif.

Gentlemen:

This will acknowledge receipt of your letter of
April 9, 1956 referring to the above premises and
your lease dated September 29, 1951.

We have heretofore entered into a lease with
Harn of California which will commence upon
your vacation of said premises, and Harn of Cali-
fornia has, with our consent heretofore sublet the
premises to Brubaker Electronics, Inc., also com-
mencing upon your vacation of the premises.

This will therefore constitute our consent and
permission for you to vacate and surrender the
above premises on April 30, 1956 instead of Sep-
tember 30, 1956 as provided in our said lease with
you dated September 29, 1951. It is understood,
of course, that all the provisions of Paragraph 7
of said lease will be fully complied with by you
prior to your vacation of the premises, and that

Plaintiff's Exhibit No. 112—(Continued)
by this letter we do not forego any claims that we
may have arising under said Paragraph #7.

Very truly yours,

/s/ JACK H. HANDELMAN,
/s/ LOUIS E. HANDELMAN,
/s/ DORIS HANDELMAN.

* * * * *

DEFENDANTS' EXHIBIT "D"

[Department of Commerce, United States Patent
Office, Washington.]

(Stamped): Received Dec. 14, 1954. Fulwider,
Mattingly & Huntley.

(Copy)

[Paper No. 1]

Fulwider, Mattingly & Babcock
5225 Wilshire Blvd.
Los Angeles 36, Calif.

Applicant: The Franklin C. Wolfe Company,
Inc. Mailed Dec. 10, 1954. I. M. Div. 1.

Ser. No.: 667,916.

Filed: June 8, 1954.

For: Trade Mark.

Please find below a communication from the
Examiner in charge of this application. /s/ Robert
C. Watson, Commissioner of Patents.

Reference cited: 426,108.

Electric Steel Foundry, registered December 17,
1946 for the mark "Duoseal" in Class 35.

Defendants' Exhibit "D"--(Continued)

Registration is refused under Section 2 (d) on the above reference for the reason that it is believed that use of these almost identical marks on such similar goods would be likely to result in confusion, mistake or the deception of purchasers.

Examiner

Du-O-Seal

FBall:dg

A proper response to this Office action must be received within 6 months from the date of this action in order to avoid Abandonment.

[Pen Notation: See my letter 8/9/54. M.W.]

(Stamped): Received Aug. 2, 1954. Fulwider, Mattingly & Huntley.

U. S. PATENT OFFICE

Address only

Commissioner of Patents

Washington 25, D. C.

35 245904

Serial Number 667916 Series of 1905

Applicant: The Franklin C. Wolfe Co., Inc.,
Culver City, Calif.

Filing Date: June 8, 1954.

For Sealing Washers Made of Rubber & Metal
"Du-O-Seal".

Fulwider, Mattingly, et al., 5225 Wilshire Blvd.,
Los Angeles 36, Calif.

Defendants' Exhibit "D"—(Continued)

The written application, drawing, specimens, and fee of Twenty-Five Dollars of your Trade-Mark, above identified, are received.

Respectfully,

Commissioner of Patents.

PO—100 a

(3-11-47)

Be sure to give the Serial Number as well as date of filing and name of applicant when inquiring about this application.

Credits On Drafts or Checks Are Subject to Collection.

Statement, Declaration and
Power of Attorney

To The Commissioner of Patents:

The Franklin C. Wolfe Company, Inc., a corporation duly organized under the laws of California, located at Culver City, California, and doing business at 3644 Eastham Drive, Culver City, California, has adopted and is using the trade-mark shown in the accompanying drawing for sealing washers made of rubber and metal in Class 35, Belting, hose, machinery packing, and non-metallic tires, and presents herewith five specimens showing the trade-mark as actually used in connection with such goods, the trade-mark being applied to the containers for the goods, and requests that the same be registered in the United States Patent

Defendants' Exhibit "D"—(Continued)

Office on the Principal Register in accordance with the Act of July 5, 1946.

The trade-mark was first used on April 20, 1954, and first used on said goods in commerce among the several states on April 20, 1954.

Declaration

Foster M. Hagmann, being duly sworn, deposes and says that he is the Secretary of the Franklin C. Wolfe Company, Inc., the applicant named in the foregoing statement, that he believes that said corporation is the owner of the trade-mark which is in use in commerce among the several states and that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use such trade-mark in commerce which may lawfully be regulated by Congress either in the identical form thereof, or in such near resemblance thereto as might be calculated to deceive, that the drawing and description truly represent the trade-mark sought to be registered, that the specimens show the trade-mark as actually used in connection with the goods, and that the facts set forth in the statement are true.

Power of Attorney

The undersigned hereby appoints Fulwider, Mattingly & Babcock, Registration No. 16,245, of 5225 Wilshire Boulevard, Los Angeles 36, California, its attorneys to prosecute this application for registration with full power of substitution and revocation, to transact all business in the Patent

DEFENDANTS' EXHIBIT "AF"

DEPOSITION OF LEO W. CORNWALL

a witness called on behalf of the defendants, heretofore sworn, was examined and testified as follows:

Mr. Miller: These depositions are taken pursuant to Rule 26 and, also, Rule 43 (b) of the Federal Rules of Civil Procedure, for the purpose of discovery.

Direct Examination

Q. (By Mr. Miller): Mr. Cornwall, what is your full name? A. Leo W. Cornwall.

Q. And where do you live?

A. Route 2—I have a new box number now—Box No. 274, El Cajon. I live eight miles east of El Cajon. [3]*

Q. Are you now employed?

A. No; only self-employed.

Q. Were you at one time employed by Rohr Aircraft Company?

A. Yes; during the second World War, up to the end of the war.

Q. Are you the Leo W. Cornwall who is one of the co-patentees named in United States Letters Patent No. 2,396,005, a copy of which I show to you? A. Yes, sir.

Q. What was the occasion for your developing the sealing device shown in that patent?

* Page numbers appearing at top of page of Original Deposition.

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

A. Well, I can't give you the exact date but I remember the incident very clearly. I had been out of the lab, probably around the shop. Or I will go back one step. I was working under Mr. Gross in the laboratory on the machine and tool designing for the laboratory and, when I came back, several of the other fellows were around one of the displays and Mr. Gross called me over and explained what they were constructing. It seems that the access doors that they had on the airplanes had about 120 bolts on them and, when they built the plane originally, they didn't have any trouble with the leaks but, if they had to get into that door and check all of those bolts out, invariably one or more of them would leak. So they tried to stop it by taking a rubber doughnut with a flat washer over it and put [4] that between the body of the plane and the nut. That was all right as long as the doughnut didn't squeeze out to one side. So Mr. Gross says, "Leo, what do you make of this?" I took one look at it and I says, "All you have to do is to put a metal ring around it." And from there on I did all of the devising of these drawings. I think you will find that there from the original I made for Mr. Gross, and Mr. Gross and I got our names on the patent.

Q. Do you know what became of that original drawing that you say that you made up?

A. I think you will still find it in one of the three boxes that Rohr Aircraft has down there in

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

the laboratory for that. The original drawings should be there.

Q. To the best of your recollection, does that drawing show a duplicate of Figure 1 of this patent drawing? A. That is right.

Q. Also, a duplicate of Figure 2 of the patent drawing? A. Yes.

Q. Also, one of Figure 3? A. Yes, sir.

Q. Also, of Figure 4? A. Yes.

Q. And Figure 5?

A. Yes. These are all taken from the original.

Q. And Figure 6? [5]

A. Yes. They might not be just exactly the same but the fundamental principle is there. I remember very distinctly making up drawings for the bolt and squeezing it down tight where it was loose. Yes; fundamentally that is exactly as I drew up the original drawings. Mr. Gross had me go to work and find out the proportion between the thickness of that washer and the W diameter of the doughnut. It took a little experimenting to find out that correct proportion. I did all of that work.

Q. What position did Mr. Gross hold at that time?

A. He was at the head of the laboratory.

Q. In charge of the laboratory? A. Yes.

Q. And what position did you hold?

A. I was just a machine and tool designer, taking care of the experimental work that came into

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

the lab of a mechanical nature, not of a chemical nature.

Q. Are all of these designs that I see on the drawings of the patent all yours or are they part Mr. Gross' or are they all Mr. Gross'?

A. Do you mean the ideas?

Mr. Miller: Would you repeat the question?

(Question read by the reporter.)

A. Well, I will have to answer that in this way. I had the original idea of putting the washer around the doughnut but the result of this was in co-operation with [6] some suggestions that Mr. Gross had.

Q. What suggestions are there of Mr. Gross' here?

A. Well, that will be kind of hard to figure out here because I can't remember details back that far. The best that I could tell you of that, and this is partially guesswork, is I believe that this hood over this doughnut is Mr. Gross'.

Q. You refer to a hood. Is that hood No. 28 on the drawing?

A. Yes. I think he will corroborate that. This simple arrangement here——

Q. Pointing to Figure 2?

A. Yes, and in Figure 3—this simple arrangement was mine.

Q. That was yours alone?

A. Yes. The idea of putting the metal ring around the doughnut was mine.

Defendants' Exhibit "AF".—(Continued)
(Deposition of Leo W. Cornwall.)

Q. Here in Figure 4 there seems to be a metal ring 21 surrounding a rubber ring 20 and there seems to be a separate washer 25. A. Yes.

Q. Whose idea was that?

A. This is partially guess. I would say that that was designed at the suggestion of Mr. Gross. He would say, "Now, find a way of sealing a bolt with a small head on it." So that is the result of that, and the same way over here. [7]

Q. Mr. Gross told you to find a way of sealing a bolt with a small head on it and did you do that?

A. Yes, by adding this flat washer here.

Q. By adding 25? A. Yes.

Q. Whose idea was it to take a nut and put the rubber ring 20 in a recess on the under side of the nut as shown in Figure 5?

A. I believe I would give Mr. Gross credit for that. I will give him the benefit of the doubt. The only thing I made a hundred per cent and take credit for is the original idea.

Q. When you said the original idea you pointed to Figure 2? A. Yes.

Q. Is that what you consider the original idea, Figure 2 and Figure 3? A. Yes; that is right.

Q. Do you recall when it was that you conceived this idea of putting a rubber doughnut inside of the washer?

A. No; I haven't any definite recollection of that other than that I was working under the

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

direction of Mr. Gross during the second World War and it was possibly two years before it ended, maybe a year and a half. What is the date here?

Q. This application for the patent was filed October [8] 2, 1944. Do you have any idea with reference to that date when it was you conceived of this?

A. Yes; I do remember we didn't waste any time on it.

Q. Do you think not more than two or three months elapsed from the time you conceived that?

A. Yes; maybe three or four but not any more.

Q. Before you filed your application?

A. Yes.

Q. Did Rohr Aircraft undertake to manufacture these washers and doughnuts?

A. As I remember it, I don't think Rohr ever attempted to manufacture those. We made some up down there on a small scale for different companies, for the Navy and the Army to try out, but I can't remember manufacturing them on any scale at all.

Q. Do you recall using them on any of the airplanes Rohr was making?

A. Yes; they were used in different places around there. I couldn't tell you any specific place at all.

Q. I have here a sheet in a catalog of the Franklin C. Wolfe Company, Inc., which I will

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

ask the reporter to mark for identification as Defendants' Exhibit 1.

(The sheet last above mentioned was marked, by the reporter, as Defendants' Exhibit No. 1 for identification.)

Can you read drawings, Mr. Cornwall?

A. Yes, sir. [9]

Q. This Exhibit 1 here seems to show a drawing wherein a seal of the type shown in Figure 4 is used. In other words, Figure 4 of the patent shows a metal ring with a rubber ring on the inside of it?

A. Yes; that is right.

Q. And a metal washer against it?

A. Yes.

Q. This seems to be applied to a tubular member that is screwed into something?

A. Yes. You can see the threads there.

Q. The tubular member seems to have a shoulder on it, which I will mark "X". Do you understand that drawing to be that way?

A. Yes.

Q. And that shoulder tightens this seal against a member into which the tubular member is screwed? Is that the way you understand that drawing?

A. Yes. This looks like a nut.

Q. I will mark the part that looks like a nut as "Y".

A. It looks like threads. I don't understand this back in here.

Q. I will mark the part "Y" that is screwed into that and the part you don't understand I will mark as "Z".

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

A. That looks like an undercut right in there.

Q. Is the seal such as you have in Figures 2 and 3 of the patent drawing suitable for use in a situation such [10] as you see in Exhibit 1, to prevent leakage, that is, where it is to be compressed between a shoulder "X" on a tubular member and something into which the tubular member is screwed?

A. Let's see; this would represent the nut.

Q. Are you referring now to "Y"?

A. Yes; to "Y". I would say the application is identical with the exception that the shoulder is just reversed and that would not, in my opinion, have anything to do with the patent.

Mr. Lee: I will object to the answer as calling for a conclusion. The witness has stated a conclusion in his answer.

Q. (By Mr. Miller): Is the seal shown in Figure 2 of your patent substitutable for the seal shown in Figure 4?

A. You are asking me if this can be used in Figure 4?

Q. In place of the seal shown in Figure 4.

A. It can't without this washer 25.

Q. That is, if the head 24 in Figure 4 is wide enough?

A. If the head is wide enough; yes.

Q. You can substitute the seal shown in Figure 2 for the seal shown in Figure 4?

A. They can be substituted as long as the small-

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

headed bolt has a land large enough to cover the metal washer that restricts the doughnut. [11]

Q. Can you substitute the type of seal shown in Figure 4 for the type of seal shown in Figure 2?

A. Yes; I see no reason why it can't be done.

Q. You show in your patent the rubber ring as having a circular cross section prior to the time that it is squeezed or compressed. Is that essential? Does it have to be that way?

A. Well, let's see——

Mr. Shepard: I would like to ask a question here. Are you asking him to comply with the terms of this patent or to effect a seal?

Mr. Miller: To effect a seal.

Mr. Shepard: To me the question was unintelligible. I couldn't get the type of conclusion that was being requested.

A. That is puzzling me a bit here.

Mr. Lee: I will object to the question in view of what the witness has said and ask that counsel reframe it to make it more clear.

Q. (By Mr. Miller): Could the rubber ring in Figure 2 be egg-shaped or oval-shaped prior to its being squeezed or compressed?

A. I will have to answer yes to that.

Q. Could it be square in cross section and work just as well as a seal?

A. There would be a question with it square.

Q. Could it be triangular? A. No.

Q. Could it be hexagonal in shape?

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

A. Yes.

Mr. Lee: I would like to interpose an objection here. The witness is not qualified as an expert. He is here to testify to facts and I believe that this entire line of questioning is calling for opinions of the witness.

Q. (By Mr. Miller): You say that it could not be square, or could be square, which?

A. It would depend on the distance between the O.D. of the bolt and the I.D. of the washer.

Q. The metal washer? A. Yes.

Q. What would that distance have to be?

A. It would have to be of a certain diameter so that it doesn't interfere too much with getting it assembled. Whatever you are inventing has to be easily used by the workmen, not that it might not function after you got it in.

Q. Suppose that there was a little clearance between the O.D. of the bolt and the I.D. of the rubber ring?

A. You would come back again to your I.D. and the O.D. It might not compress down sufficiently to give you a seal.

Q. Is there a certain relationship that must be maintained between the thickness of the rubber ring and the [13] thickness of the metal ring?

A. That is right. You have to take into consideration your cross section of that space in there.

Q. And what must that relationship be?

A. The W diameter has to give you an area

Defendants' Exhibit "AF" —(Continued)

(Deposition of Leo W. Cornwall.)

a little bit in excess of the square area of that space in there in order to compress and seal.

Q. I will ask you this. If the rubber ring 20 is fatter than the metal ring 21, won't that rubber ring compress and seal when you tighten up the bolt?

A. It will compress and seal but it wouldn't give you a good contact between the head of your metal ring and the body of whatever you are sealing.

Q. With reference to the reference characters here, if the rubber ring 20 is fatter than the metal ring 21, you say that that would or would not be all right?

A. It would compress down to the limit and then you would have a space between the head 10 and the metal washer.

Mr. Lee: Counsel, what are you talking about when you say "fatter"?

Mr. Miller: Thicker.

Q. You understood fatter to mean thicker, didn't you? A. Yes.

Mr. Lee: With reference to Figure 2, as I understand what is shown there, the ring 20 is fatter than the washer? Is that what you are speaking of? [14]

Mr. Miller: That is right.

A. What I thought he meant is that, after it was compressed to this limit, the head would not still come down on the metal ring.

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

Q. No. I had reference substantially as shown here in Figure 2. 20 is a little bit thicker than the thickness of the metal ring 21?

A. Yes; that is the way we worked it out.

Q. So that, when you tighten up the bolt, you squeeze the rubber ring down to the thickness of the metal ring 21, is that right?

A. Yes; there is a certain ratio that has to be maintained and Mr. Gross and I worked that all out.

Q. What is that ratio?

A. I couldn't tell you now but it has to be maintained.

Q. Is there any disclosure in your patent as to what that ratio should be?

Mr. Shepard: I would like to talk to Mr. Lee a minute.

(Short recess.)

A. I believe I have found it here.

Q. (By Mr. Miller): Will you read it, please?

A. "The cross section area of the rubberlike washer and the channel inside the washer has been so designed that, after the screw, bolt or rivet, has been tightened, the rubberlike material will not only fill the channel but will [15] represent a rubberlike packing under compression similar to a gland packing."

Mr. Lee: Counsel, at this point, I will interpose an objection. The patent speaks for itself and is the best evidence of what is there disclosed. You

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

are asking the witness to interpret and draw conclusions from the patent and he is not qualified and has not testified as an expert. And, if this is to continue, I will request that the witness be instructed not to answer any further questions.

Mr. Miller: You may do what you like, Mr. Lee.

Q. Is that the only reference that you see in the patent where the ratio of the thickness of the rubber washer to the thickness of the metal washer is set forth?

Mr. Lee: Mr. Witness, I instruct you not to answer the question on the ground it calls for an interpretation of the patent.

Mr. Miller: I wish to remind you that this man is the inventor. It is his brain child. If anybody knows anything about this, he does or he should.

Mr. Lee: The patentee doesn't have to interpret the claims and specifications.

Mr. Miller: I am not asking him to interpret the claims. I am asking him where the disclosure in his patent is as to this ratio. He has pointed to one instance where he thinks that is disclosed.

Q. Is there any other place there that you see?

Mr. Lee: Mr. Cornwall, I instruct you not to answer the question.

Q. (By Mr. Miller): Suppose that you have a washer a tenth of an inch thick. Can you tell me what the thickness of the O ring should be in that washer?

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

A. Not without sitting down and knowing the size of your bolt and the inside diameter of your metal washer.

Q. Suppose that your bolt is a half-inch bolt and your inside diameter of your metal washer is five-eighths.

Mr. Lee: I will object to the question asked as being impossible for the witness to answer offhand, as to what the exact dimensions of something should be.

A. I couldn't give it without sitting down and figuring it out.

Q. (By Mr. Miller): Will you tell me how to figure that out?

A. Not now; no. I have forgotten all of those ratios. That has been 10 years ago.

Q. In your patent, on page 1, column 1, line 6 and lines following, you refer to leak-proofing of bolts, screws or rivets. Can you leak-proof other devices, such as the tubular member shown in Exhibit 1 and the nut "Y" shown in Exhibit 1, between the nut "Y" and the shoulder "X"?

A. You say can you leak-proof them?

Q. Yes, with your washer as shown in Figs. 2 and 3 [17] of your patent.

A. Well, this particular drawing is not plain enough, so I wouldn't say. I would have to see that all in detail.

Mr. Lee: The witness is referring to Exhibit 1.

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

Q. (By Mr. Miller): Is your invention restricted to bolts, screws and rivets, or can it be used on hollow bolts and hollow rivets.

Mr. Lee: I will object to that question as calling for an interpretation of what the invention of the patent is and I will instruct the witness not to answer.

A. I would have to read this all over before I could answer that. A rivet is a rivet whether it is tubular or whatever it is.

Q. (By Mr. Miller): And a bolt is a bolt regardless of whether it is hollow or solid, isn't it?

A. I would say so. I don't see how you could say it any different.

Q. I will show you a photostatic copy of British Patent No. 537,654 and call your attention to the fact that in that patent there is a disclosure in Figure 3 of a tubular member, having a shoulder 9, that is screwed into a part 10.

Mr. Lee: Counsel, I will object to the witness testifying as to what the prior art shows. The witness is not here as an expert on the prior art. If you ask him a question [18] about the prior art, I will instruct him not to answer.

Mr. Miller: May I continue with my question?

Mr. Lee: Yes; you may.

Mr. Miller: Where did I quit before I was interrupted, Mr. Reporter?

(Question read by the reporter.)

Now, to continue, is the seal shown in Figures

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

2 and 3 of your patent susceptible of use to establish a leak-proof seal at the location of 8?

Mr. Lee: I will instruct the witness not to answer that question because it calls for a legal conclusion and opinion as to whether or not something is the same as something else. It is not a fact that is called for.

Mr. Miller: You didn't listen to the question.

Mr. Lee: Yes; I did. Will you read it again?
(Question read by the reporter.)

Mr. Lee: I object to the question on the ground that it is incompetent and calls for a conclusion of an expert and the witness is here to testify as to facts, and I instruct him not to answer the question.

Mr. Miller: Do you dispense with all of the formalities necessary to have these questions referred to the court? Will you stipulate we don't have to go through the formality of having the Notary propound the question to the witness and getting his refusal?

Mr. Lee: That is right; so stipulated. [19]

Q. (By Mr. Miller): Could you use your sealing device in a hose coupling, for example, as shown in Figures 2 and 3 of the patent?

A. I am not familiar with that application at all.

Q. You are familiar with garden hoses, aren't you, and you are familiar with the fact that rubber washers are used in the hose couplings of garden hoses?

A. I have seen them; yes.

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

Q. Your sealing device could be used in a hose coupling in place of the rubber washer, could it not?

A. I see no reason why it couldn't be. May I add to that?

Q. Yes.

A. The coupling would have to be redesigned a little bit.

Q. In what respect?

A. The threads might have to be made a little bit larger to accommodate the metal washer and the rubber washer in there.

Q. Other than that change, your device would work all right, is that right? A. Yes.

Q. Considering this British patent, if the threaded end at the lower end of the part 9 is considered the same as the threaded end on a hose coupling and the part 10 is considered as the threaded socket on the hose coupling, your [20] sealing device as shown in Figs. 2 and 3 of your patent could be used to make that hose coupling leak-proof couldn't it?

Mr. Lee: I will object to that question, first of all, on the ground that it is not clear; that it is a compound question; and, secondly, upon the grounds previously stated in connection with this British patent, that the witness is not here to give opinions or conclusions but to testify to facts within his own knowledge, and I instruct him not to answer the question.

Mr. Miller: I will ask that the answer be taken

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

in spite of your instruction, Mr. Lee, inasmuch as this witness is not your client as I understand it.

Mr. Lee: We can stop the proceeding now, counsel, and get a ruling on that or we can go ahead with any other questions you have and save that until later.

Mr. Miller: Inasmuch as we have come this long distance, I will ask that the question be answered by the witness, subject to your motion to strike.

Mr. Lee: Counsel, are you going further on these questions?

Mr. Miller: That is about as far as I want to go on that.

Mr. Lee: I will also object to the question on the ground previously stated, that it is uncertain, and I ask counsel to reframe it and try to break it down.

Mr. Miller: In what respect is it uncertain?

Mr. Lee: Will you read it, Mr. Reporter?

(Question read by the reporter.)

Mr. Lee: I object to the question on the ground it is not clear what counsel means by "considered," and we have no hose coupling in evidence that we are talking about here.

Mr. Miller: No; we have none.

Q. Suppose I sketch, Mr. Cornwall, something like the ordinary hose coupling, in which you have a hose. It usually has a little embossment and then some threads on the lower end, and you are going to screw that into a socket on another piece of hose.

A. Yes; your female end.

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

Q. Could your sealing device on this sketch that I have drawn be used to leak-proof if it were installed at the point that I will mark "A" on this sketch?

A. Yes, by properly designing these shoulders here.

Q. The shoulders "B" and "C"? Is that what you are talking about?

A. Yes, or it could be applied down in here. It can also be placed in say cavity "D" which is designed to take it if they have properly designed the space to take them.

Q. What proper design would be necessary to use your sealing device at "A"?

A. You have got to have the lands to cover the doughnut. [22]

Q. That is, the width of the shoulder "B" and the width of the shoulder "C" must go beyond the doughnut so that they will come down beyond the washer on the outside, is that it?

A. Yes, and the same way with the space "D" here.

Mr. Miller: I will ask that this sketch be marked Defendants' Exhibit 2 for identification.

(The sketch last above referred to was marked, by the reporter, as Defendants' Exhibit 2 for identification.)

Q. (By Mr. Miller): Referring to this British patent, I would like to have you read that patent and tell me, if you can, any difference between your

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

sealing device and the sealing device shown in Figure 2.

Mr. Lee: I will object to the question if that is a question, counsel, as calling for a conclusion and opinion and I will instruct the witness not to answer.

Mr. Miller: I would like to take his answer.

Mr. Lee: On this particular point of that British patent, I will ask that you reserve that question until later, counsel.

Mr. Miller: I don't want to make two trips here.

Mr. Lee: And you haven't established this British patent as prior. I don't want you to answer that question. If you want to adjourn the proceeding now and find out whether he has to answer, we can do that, although I think it would be advisable to go ahead and save all of these [23] questions and get a ruling on them.

Mr. Miller: I will submit this matter to the court.

Q. Has your sealing device ever employed, or has it been employed to your knowledge, as a type of a lock washer?

A. Not to my knowledge to take the place of a lock washer. I am not aware of it.

Q. Will it function to prevent loosening of the screw or bolt?

A. I believe it would to a certain degree but I don't think the degree is very great.

Q. In the file history of your patent, a certified

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

copy of which I have before me and which I will be glad to show to you, on page 19, the statement is made, "Further note that, when the metal to metal contact is obtained between the metal retainer ring and the tank walls, the rubber doughnut 20 is thus put under compression and said doughnut then acts as an effective lock which co-operates to prevent loosening of the screw on the bolt." Do you agree with that statement?

A. Yes, but what the degree is I don't know.

Q. If used as a lock washer, is there any difference between your sealing device and the lock washer shown in Figure 5 of the Hart Patent No. 67,539, issued August 6, 1867, a copy of which I now show to you?

Mr. Lee: I will object to that question as asking for a conclusion of the witness and instruct him not to answer. [24]

A. And I couldn't answer it anyway. That would take some engineering to find that out.

Q. (By Mr. Miller): Is it essential in your construction that the rubber ring be detached from the metal ring?

A. Well, I haven't gone into the applications of that since I left Rohr Aircraft and what has been found on that I couldn't say; I don't know. I wouldn't want to answer one way or another.

Q. Up to the time you filed your application for your patent, all of your devices that you made or saw made had the rubber ring detached from the

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

metal ring, did they not? A. That is right.

Q. On page 3 of your patent, column 1, line 15 and following, the statement is made, "whereby on the under side of the head of the fastener compressing the rubberlike ring against a portion of one contiguous wall of the tank being fastened together, said ring is deformed into sealing contact with the bore of the washer, the shank, the head of the fastener and said contiguous portion of said wall." What is meant by the ring being deformed into sealing contact with the bore of the washer?

Mr. Lee: I will object to the question as calling for an interpretation of the claims of the patent and instruct the witness not to answer the question.

Mr. Miller: I will submit the question for a ruling of [25] the court.

Q. In your device, when the rubber ring is detached from the metal ring and the bolt is tightened up as shown in Figure 3 of your patent, does the rubber ring expand into sealing engagement with the wall of the bore of the washer?

A. It does not expand. It is compressed into that rectangular space.

Q. Does the rubber ring then try to expand against the wall of the metal washer?

A. That is a roundabout way of interpreting it. When you compress something round into a square space, it does compress on the four sides, that is true, but it is compressed to fill that space in there.

Q. And it compresses all different ways, doesn't

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

it? It compresses inwardly against the shank of the bolt and it is also compressed against the head of the bolt and it is also compressed against the wall of the tank 9? A. Yes.

Q. And it is also compressed outwardly against the bore of the washer 21, isn't it?

A. Yes; that is right. But you mentioned expansion there somewheres.

Q. Yes. A. How did you say that, now?

Q. Let me ask you this first. In your construction [26] of the device as shown in Figs. 2 and 3 of your patent, was the rubber ring loose within the metal ring at the time of installation and prior to the time that the bolt was tightened?

A. No. We found there had to be a certain amount of tension there.

Q. What do you mean by tension?

A. The outside diameter of the rubber ring should be just a little greater than the inside diameter of the rubber doughnut.

Q. Is that mentioned in the patent anywhere?

A. That I don't know without reading it all over.

Q. I wish you would read it and, if you find it in there, point it out.

Mr. Lee: I object because the patent speaks for itself as to what is mentioned in it. The witness doesn't have to testify to that.

Q. (By Mr. Miller): Can you point out where that is disclosed in your patent, that the rubber ring

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)
should be a little bit oversize with respect to the bore of the washer?

Mr. Lee: I will object to the question and instruct the witness not to answer. The patent speaks for itself.

Q. (By Mr. Miller): Did you at any time ever make a construction wherein the rubber ring was bonded to the metal washer?

A. Not at the time I was at Rohr Aircraft; no.

Q. When did you leave Rohr Aircraft?

A. At the end of the war, in 1945. I think it was in August or maybe it was September. Is that right, Mr. Shepard?

Mr. Shepard: My records indicate that you left on September 14, 1945, the first time.

Q. (By Mr. Miller): In your construction, can the cross-sectional diameter of the rubber washer be as much as twice as fat or twice as great as the thickness of the metal washer and still work effectively? A. I would say no.

Q. Can it be one and one-half times as great?

A. Now you would be approaching the correct proportion there and I don't know what that is.

Q. Can it be only one and one-tenth times as great?

Mr. Lee: The witness just testified he didn't know what the proportions were.

A. I couldn't say.

Q. (By Mr. Miller): At the time you developed

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

the seal shown in your patent, were you acquainted with a sealing device known as Dyna-seal?

A. No, sir.

Q. Do you see any distinction between the construction shown in Figure 4 of your patent and the construction shown in the Hart Patent No. 128,391?

Mr. Lee: I will object to the question and instruct [28] the witness not to answer because it calls for a conclusion.

A. It is so indistinct that, offhand, I can't study it out. It would take a little time.

Q. (By Mr. Miller): I wish you would state in your own words just what you regarded your invention, particularly that form shown in Figs. 2 and 3, to consist of.

Mr. Lee: Are you referring now to the patent, counsel?

Mr. Miller: You have five forms and I am talking about one form.

Mr. Lee: As shown in the patent?

Mr. Miller: Yes.

Mr. Lee: I will object to the question as calling for an interpretation of the patent and instruct the witness not to answer.

Q. (By Mr. Miller): What other shapes can the rubber ring be given in cross section besides round?

Mr. Lee: I believe the question has been asked and answered in the beginning of the deposition.

Defendants' Exhibit "AF"—(Continued)
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A. In what different shapes can this rubber doughnut be made?

Q. (By Mr. Miller): Yes.

A. It could be made in several shapes but you are coming back to the practicability of manufacturing them.

Q. What other shapes could it be given besides round?

Mr. Lee: I will object to the question. How can the witness answer all possible shapes and variations it might [29] have? It is too broad and indefinite.

A. You would have to end up with your proper proportions regardless of the shape.

Q. (By Mr. Miller): Then it could have other shapes besides round, could it?

A. Yes; there is no question about it.

Q. Did you make them up in any other shape besides round? A. No.

Q. In making up your seals as shown in Figs. 2 and 3, did you just go out and buy some ordinary "O" rings for that purpose?

A. Some we bought and some we had to have made specially to fit the different applications.

Q. For different sizes, bastard sizes, so to speak?

A. Yes.

Q. Those that you bought were just ordinarily conventional "O" rings that are ordinarily used for seals, were they?

A. We were able to apply those to certain appli-

Defendants' Exhibit "AF"—(Continued)

(Deposition of Leo W. Cornwall.)

cations but on other applications, where we couldn't, we had to have rings made. I remember going up to a plant on two occasions with Mr. Gross where they manufactured the rings.

Q. Where did you go?

A. I couldn't tell you now.

Q. Was it some rubber concern here in San Diego? [30]

A. No; it was in Los Angeles. I don't remember the name of the place.

Q. You and Mr. Gross went up together?

A. Yes, sir.

Q. Was that before or after you filed the application?

A. That I couldn't tell you. I would have to check back the records.

Q. Who has those records? Has Rohr Aircraft?

A. I don't have any of the records other than I have a copy of this exhibit.

Q. A copy of the application for the patent?

A. Yes.

Q. You are not in any way interested in the outcome of this lawsuit, are you? A. No, sir.

Q. Who was it that induced you to file an application for a patent on your sealing washers?

A. The only thing I remember is Mr. Gross said we had better get a patent application on it right off. That is the only thing I can remember. Whether those are the exact words or not, I don't know.

Q. Did you think it was patentable at the time?

Defendants' Exhibit "AF"—(Continued)
(Deposition of Leo W. Cornwall.)

A. At the moment, I didn't give it a thought; no.

Q. In other words, you didn't know whether it was patentable or not? [31]

A. No. That was Mr. Gross' business.

Mr. Miller: That is all. Thank you very much, Mr. Cornwall.

(Short recess.)

Cross Examination

Q. (By Mr. Lee): Mr. Cornwall, at the time this invention was made in Patent No. 2,396,005, you were working in a laboratory at Rohr Aircraft?

A. Yes.

Q. And under the direct supervision of Mr. Gross? A. That is right.

Q. How long approximately had you been working in that laboratory?

A. At that time?

Q. Yes; just approximately.

Q. I would have to make an awful wild guess; possibly six months.

Q. Were you assigned to work on sealing devices by Mr. Gross?

A. No, because, as I explained, it wasn't talked over at all before that. I came in from the outside and Mr. Gross called me over and said, "Leo, what do you make of this?"

Q. You were working on general projects?

A. On anything that happened to come up. That

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was [32] my business, to do the best I could in working them out.

Q. I believe you testified that you worked with Mr. Gross on working out the dimensions.

A. That is right.

Q. And you tested different models of this invention? A. Yes.

Q. And you worked with Mr. Gross on all of this test work?

A. That is right. He instructed me to work out every possible application that I could.

Q. And you were in daily contact with him?

A. Yes.

Q. And you discussed it frequently with Mr. Gross?

A. Yes; I would sketch up something and take it in to him and we would talk it over and, if it didn't look right, we would change it.

Mr. Lee: Those are all of the questions I have, Mr. Cornwall.

Redirect Examination

Q. (By Mr. Miller): Was there any part of the construction shown in Figs. 2 and 3 of your patent that was designed or suggested by Mr. Gross, or was that entirely your own?

A. The very original idea of putting the metal ring around the doughnut was mine because that was the answer I gave Mr. Gross, and I think he will still remember that. [33]

Defendants' Exhibit "AF"—(Continued)
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Q. I am referring to Figure 4. Was there any part of that which was Mr. Gross' or was that entirely your own?

Mr. Lee: Counsel, are you referring to the exact thing shown in Figure 4 or to the original idea?

Mr. Miller: He has testified about the original idea. I am talking about Figure 4 now.

Mr. Lee: Will you read the question again, Mr. Reporter?

(Question read by the reporter.)

Mr. Lee: What do you mean by that, counsel?

Mr. Miller: The design of the seal shown in Figure 4.

A. I doubt if it was mine a hundred per cent because we had to talk over all of these other applications.

Q. Of the original idea?

A. That is right; but I couldn't pick out which was which. That would be impossible.

Mr. Miller: That is all. Will you stipulate that the deposition of Mr. Cornwall may be signed before any Notary?

Mr. Lee: Yes; so stipulated.

/s/ LEO W. CORNWALL.

Subscribed to and sworn to before me this 18th day of August, 1955.

[Seal] /s/ A. H. DeRIEMER,
Notary Public in and for the County of Los Angeles, State of California. [34]

[Endorsed]: Filed August 26, 1955.

[Endorsed]: No. 15884. United States Court of Appeals for the Ninth Circuit. Rohr Aircraft Corporation and The Franklin C. Wolfe Company, Inc., Appellants, vs. Rubber Teck, Inc., Rubber Teck Sales and Service Co., Paul A. Karres, Otto R. Grass and Joe P. Kerley, Appellees. Rubber Teck, Inc., Rubber Teck Sales and Service Co., Paul A. Karres, Otto R. Grass and Joe P. Kerley, Appellants, vs. Rohr Aircraft Corporation and The Franklin C. Wolfe Company, Inc., Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: February 10, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15884

ROHR AIRCRAFT CORPORATION and THE
FRANKLIN C. WOLFE COMPANY, INC.,
Appellants,

vs.

RUBBER TECK, INC.; RUBBER TECK
SALES AND SERVICE CO.; PAUL A.
KARRES; OTTO R. GRASS; JOE P.
KERLEY, Appellees.

STATEMENT OF POINTS ON APPEAL

The points upon which Plaintiffs-Appellants will rely on appeal are as follows:

1. The Court erred in holding that Claim 1 of the patent in suit, No. 2,396,005 was not infringed by the defendants.
2. The Court erred in holding that Claim 1 of the patent in suit is invalid.
3. The Court erred in holding that the defendants have not competed unfairly with the plaintiffs.
4. The Court erred in dismissing plaintiffs' complaint and awarding costs to the defendants.
5. The Court erred in finding that terms used in the patent in suit must be construed strictly against the plaintiffs.

6. The Court erred in finding that the patent in suit is invalid for lack of invention in determining the amount of rubber to be used in the sealing ring.

7. The Court erred in finding that the patent in suit is invalid for lack of invention or anticipation by the patents placed in evidence by the defendants.

8. The Court erred in admitting into evidence the patent to Dowty, No. 2,455,982 and the patent to Johanson, No. 2,462,023.

9. The Court erred in finding that the defendants did not misuse or appropriate any trade secret or proprietary information of the plaintiffs.

10. The Court erred in holding that a single instance of confusion may not establish confusion as a matter of trademark law, and that the defendants' use of a trademark similar to those of the plaintiffs does not raise the possibility of confusion of the public.

FULWIDER, MATTINGLY
& HUNTLEY,

/s/ By JOHN M. LEE,
Attorneys for Appellants.

JML/aab

Affidavit of Service by Mail Attached.

[Endorsed]: Filed February 24, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON BY DEFENDANTS - APPELLEES
AND CROSS-APPELLANTS

The points on which defendants-appellees and cross-appellants will rely upon appeal are as follows:

1.

The Court erred in holding that there is no merit in defendants' counterclaim.

2.

The Court erred in refusing to require plaintiffs to comply with demand made by defendants' counsel to produce copies of their application which would have justified their use of the words "other patents pending" in plaintiffs' advertising literature.

3.

The Court erred in failing to grant defendants' counterclaim under the provisions of 35 USCA 292.

4.

The Court erred in refusing to afford defendants an opportunity to make an appropriate application for the allowance of attorney's fees.

5.

There was an abuse of discretion on the part of the Court in denying defendants' prayer for attorney's fees without affording defendants an oppor-

tunity to present facts and circumstances justifying their award.

FRED H. MILLER,
STANLEY A. PHIPPS,
/s/ By FRED H. MILLER,
Attorneys for Appellees and
Cross-Appellants.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 3, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION RE ORIGINAL EXHIBITS
AND PRINTED COPIES

It is hereby stipulated by and between the above-entitled parties through their respective counsel, subject to the approval of the Court, that soft, printed copies furnished by the Patent Office may be used in preparing the record in place of printed copies of Plaintiffs' Exhibit 23 and Defendants' Exhibits A and AD.

It is further stipulated that only ten (10) copies of the Book of Exhibits on appeal be printed.

The purpose of this stipulation is to reduce the cost of preparing the record on appeal as far as possible commensurate with a proper presentation

thereof to said Court for determination of the appeal.

Dated at Los Angeles, California, this 18th day of April, 1958.

FULWIDER, MATTINGLY
& HUNTLEY,
ROBERT W. FULWIDER,
JOHN M. LEE,
/s/ By JOHN M. LEE,
Attorneys for Appellants.

FRED H. MILLER,
STANLEY A. PHIPPS,
/s/ By FRED H. MILLER,
Attorneys for Appellees.

[Endorsed]: Filed April 22, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION RE ORIGINAL
EXHIBIT

It is hereby stipulated by and between the above-entitled parties through their respective counsel, subject to the approval of the Court, that Defendants' Exhibit C shall be used as a physical exhibit and need not be printed in the Book of Exhibits.

Dated at Los Angeles, California, this 18th day of April, 1958.

FULWIDER, MATTINGLY &
HUNTLEY,
ROBERT W. FULWIDER,
JOHN M. LEE,

/s/ By JOHN M. LEE,
Attorneys for Appellants.

FRED H. MILLER,
STANLEY A. PHIPPS,

/s/ By FRED H. MILLER,
Attorneys for Appellees.

[Endorsed]: Filed April 22, 1958. Paul P.
O'Brien, Clerk.

